Municipal Court Recorder

Volume 14 DECEMBER 2004 No. 2

Federal and State Case Law Update Academic Year 2004-2005

By Ryan Kellus Turner, General Counsel, TMCEC

Except where otherwise noted, the following case law and opinions were handed down October 1, 2003 through October 6, 2004.

I. U.S. Supreme Court

A. 4th Amendment: Search and Seizure

1. Stop and Identify

Hiibel v. Sixth Judicial Dist. Court, 124 S. Ct. 2451 (2004) – Defendant was convicted before a justice of the peace for violating Nevada's "stop and identify" statute. The Sixth Judicial District Court, Humboldt County, upheld the conviction, and the Nevada Supreme Court affirmed. Certiorari was granted. The U.S. Supreme Court, Justice Kennedy writing for the majority, held that: (1) arrest of *Terry* stop suspect for refusal to identify himself, in violation of Nevada law, did not violate Fourth Amendment prohibition against unreasonable searches and seizures, and (2) defendant's conviction for refusal to identify himself did not violate his Fifth Amendment right against self-incrimination. Affirmed. (Justice Stevens dissented and filed opinion. Justice Breyer dissented and filed opinion, in which Justices Souter and Ginsburg joined.)

2. Roadblocks

Illinois v. Lidster, 540 U.S. 419 (2004) – Defendant was convicted in the Circuit Court, Du Page County of driving under the influence of alcohol (DUI). Defendant appealed. The Appellate Court reversed. State appealed. The Supreme Court of Illinois affirmed. Certiorari was granted. Before the U.S. Supreme Court, Justice Breyer writing for the majority, held that: (1) brief stops of motorists at highway checkpoint at which police sought information about recent fatal hit-and-run accident on that highway were not presumptively invalid under the Fourth Amendment (special law enforcement concerns sometimes justify highway stops without individualized suspicion), and (2) stop of motorist who was arrested for driving under the influence of alcohol (DUI) after he arrived at the stop did not violate his Fourth Amendment rights.

Case Law continued on page 6

Municipal Courts Week

November 1-5, 2004 was Municipal Courts Week, and activities were held in cities across Texas. Special appreciation is shown to the municipal courts in Alvin, Balch Springs, Corsicana, Crowley, Driscoll, Harlingen, Kennedale, Nassau Bay, Round Rock, Dallas, Princeton, Cockrell Hill, Missouri City, Coppell, Katy, Sealy, and Seabrook for sponsoring programs and keeping TMCEC informed of the events. Summaries can be found on the TMCEC website at: www.tmcec.com/courtweek/localevents.html. Next year, the celebration is scheduled for the week of October 31 through November 4, 2005. Please mark these dates on your calendar.

INSIDE THIS ISSUE

Texas Municipal Courts Education Center

1609 Shoal Creek Boulevard, Suite 302
Austin, Texas 78701
512/320-8274 or 800/252-3718
Fax: 512/435-6118
Website: www.tmcec.com

Fair and Impartial Justice for All

Published by the Texas Municipal Courts Education Center through a grant from the Texas Court of Criminal Appeals. Subscriptions are free to all municipal judges, clerks, prosecutors, and support personnel employed by the municipal court. Others may purchase an annual subscription for $50.

AROUND THE STATE

DADAP versus AAPM

The Texas Education Agency approves Drug and Alcohol Driving Awareness Programs (DADAP) that are taken for the purpose of reducing one's automobile insurance. DADAP programs are NOT an approved program for the purpose of adjudicating the offenses of minor in possession of alcohol, minor consumption of alcohol, attempted purchase of alcohol, purchase of alcohol by a minor, misrepresentation of age, or driving under the influence of alcohol by a minor. In fact, minors receiving citations under Section 106.115, A.B.C., are not eligible to receive the discount.

Minors convicted of alcohol-related offenses under Section 106.115, A.B.C., should be referred to Alcohol Awareness Programs for Minors (AAPM) that are approved by the Texas Department of State Health Services, formerly the Texas Commission on Alcohol and Drug Abuse. This agency's website can direct minors to the approved programs: www.drugfreetexas.com.

TMCEC has received reports that certain DADAP programs are attempting to market their programs to minors and courts as a state approved alcohol awareness program for minors convicted under Section 106.115. Courts are advised NOT to refer minors to these programs nor accept these certificates.

For additional information, contact 800/832-9623, ext. 6685.

Mandatory Training

Municipal judges are reminded that they are required to comply with the Rules of Judicial Education, promulgated by the Court of Criminal Appeals. These are found on the websites of TMCEC (www.tmcec.com) and the Court of Criminal Appeals (www.cca.courts.state.tx.us/rules/JERules/rules01.9-1-02.doc).

According to these Rules, all municipal judges must attend one accredited seminar every year. Newly appointed or elected attorney judges must attend a Texas Municipal Courts Education Center (TMCEC) 12-hour seminar within one year from appointment or election and once every school year thereafter. Newly appointed or elected non-attorney judges must, within one year from the date of appointment or election, complete 32 hours of continuing judicial education from TMCEC before attending a 12-hour seminar the next year and once every school year thereafter. After two years of TMCEC training, judges may "opt-out" every other year by attending a course offered by an approved provider.

The academic year for TMCEC and municipal judges is September 1, 2004 through August 31, 2005. Judges who have been on the bench longer than one year must attend an approved seminar for judicial education credit regardless of birth date or date of appointment. For attorney judges, this is a different reporting year than the State Bar's MCLE Rules, which are based on birth date.

After review by the Municipal Courts Education Committee, the names of judges who do not comply with these Rules are submitted by TMCEC to the Court of Criminal Appeals. The Court of Criminal Appeals then forwards the names on to

Training continued on page 5

FROM THE GENERAL COUNSEL

Ryan Kellus Turner

Thanks

I would like to thank those of you who have taken the time to send generous words of praise and encouragement. I am excited about my new role here at TMCEC. Preserving public safety and maintaining quality of life is too often an under-appreciated job. I strongly believe in the importance of your work. TMCEC remains committed to helping you get the job done. I look forward to the future and working with all 3,000+ of you. In the words of Morrissey, "the privilege, the pleasure, is mine."

As I have an admitted proclivity towards annotation, writing this column is definitely a change of pace for me. This column has historically been used to tie loose ends together and address some things that don't warrant an entire article. And, yes, from time to time it has been used to editorialize and inject a little humor. I have promised my boss, Hope Lochridge, that I will write this column on a semi-regular basis in the same spirit as my predecessor, W. Clay Abbott. I have also given her my word that I will not resort to the use of endnotes or heavy citation at any time during the column.[1]

In recent years, TMCEC with the support of its board of directors and its volunteer contributors, has strived to make the *Municipal Court Recorder* a unique publication aimed at filling a particular information gap. Dedicated to addressing in detail the laws and events that impact Texas municipal courts on a daily basis, the publication has moved beyond being just a "newsletter." Yet, it has also refrained from going off into the deep end of impracticality. We know that there are particular subjects of interest to our readers that are not addressed elsewhere. We are committed to publishing such articles and building a body of specialized literature that informs and assists municipal courts in serving the people of Texas (and using endnotes in the process).

Designated Funds

At the second *Asked and Answered: Q&A* pre-conference class, a number of judges and clerks expressed concern in how their governing bodies are depositing monies accrued through the adoption of both the Municipal Court Technology Fund (Article 102.0172, Code of Criminal Procedure) and the Municipal Court Building Security Fund (Article 102.0172, Code of Criminal Procedure). Word has it that a number of municipalities are depositing technology and security funds not into a designated fund as required by law, but into the general revenue account of the municipality. Is your city engaged in the misappropriation of funds?

All municipalities and their city attorneys are encouraged to take corrective action and take heed of the following change in the law. During the 77th Legislature (2001), Section 321.017 of the Government Code was added to provide that the state auditor may review each fund and account into which money collected as a court cost is directed by law to be deposited to determine whether the money collected is being used for the purpose it was intended. Findings are public and may include recommendation for legislative or policy change.

We had a good Q&A session in Austin, and I look forward to seeing more of you (and your questions) down the road.

Pretrial Distraction

Throughout the summer, TMCEC has received countless telephone calls regarding the use of "pretrial diversion" in cases involving holders of a commercial driver's license. Attorneys making formal requests for said "pretrial diversions" have solicited many of you.

Is there such a thing as "pretrial diversion?" Yes, there really is. I encourage you to read Debra T. Landis's "Pretrial Diversion: Statute or Court Rule Authorizing Suspension or Dismissal of Criminal Prosecution on Defendant's Consent to Non-Criminal Alternative," 4 ALR 4th 147 (2004). Call TMCEC if you would like a copy at no charge.

Is pretrial diversion a part of Texas law? Yes, but only in certain instances where it is statutorily authorized. I encourage you to read Attorney General Opinion JC-0042 (1999) to learn more about its limited application and how the term has been misapplied in the past.

Can prosecutors use pretrial diversion to give a break to CDL holders? As explained in JC-0042, prosecutors have the authority to dismiss or not prosecute a case. However, to call such a decision a "pretrial diversion" is not legally accurate unless done pursuant to a specific statute. We know that using the term as part of a *quid pro quo* has been called into question in the past. See Attorney General Opinion, JC-0119 (1999). Furthermore, we know that when municipalities engage in the unauthorized use of pretrial diversion and collect court costs, all monies must be remitted to either the defendant or the Comptroller. See Attorney General Opinion GA-0061 (2003).

Is there any statutory authorization for its use in municipal or justice court? No. Also, I think it is more than coincidence that such requests for "pretrial diversion" only became a discussion of topic in our courts after the Legislature elected to deny a holder of a commercial driver's license the right to dismissal via a driving safety course or deferred disposition.

The bottom line is that in municipal and justice courts, the term "pretrial diversion" is being used by some in an attempt to mask the traffic violations of commercial drivers. The misapplication of a legal term hardly circumscribes the letter and intent of the law. Are such folks pretending?

[1] Made you look!

Magistrate's Authority to Issue Search

By Tiffany Dowling, Legal Research Assistant, TMCEC

A Judge's Role as Magistrate

A municipal judge holds two positions by virtue of office. First, the judge is just that—the municipal judge. Secondly, the judge is a magistrate. The Code of Criminal Procedure provides for practically all judges in Texas to act as magistrates, including municipal judges and justices of the peace.[1] In general, a magistrate's power to act as a magistrate derives from being a judge. A judge who has not taken the oath of office required by the Constitution is not a judge and is also not a magistrate.[2]

Despite the indispensable link between being a judge and being a magistrate, it is sometimes useful to consider the two positions as separate jobs. A municipal judge, for example, maintains a docket,[3] presides over trials and rules on motions.[4] As a magistrate, a municipal judge administers warnings to criminal defendants,[5] issues arrest warrants[6] and issues search warrants.[7]

The remainder of this article will address the authority of a municipal judge and justice of the peace acting as a magistrate to issue search warrants and the geographical jurisdiction of such a magistrate. During fiscal year 2003, 1,325 municipal judges issued a total of 5,937 search warrants.[8] During the same period, 827 justices of the peace issued a total of 2,429 search warrants.[9] These numbers may look low, but they can be deceiving. Municipal judges and justices of the peace make up approximately 68% of all judges in Texas.[10] Not only do municipal judges and justices of the peace constitute a majority of all judges in Texas, they are also spread over a large geographic area. Because they are spread out across the state, municipal judges and justices of the peace may be more readily available to peace officers seeking a search warrant.

Geographical Jurisdiction

When acting as the municipal judge, a judge's geographical jurisdiction is limited to the area within the territorial limits of the municipality and property owned by the municipality in the municipality's extraterritorial jurisdiction.[11] However, the geographical jurisdiction of a magistrate who is a municipal judge or justice of the peace is widened to include the entire county.[12] In other words, such a magistrate may issue a search warrant for premises that are outside of the city's limits but within the county. This power was first given to justices of the peace in a 1939 Court of Criminal Appeals decision, *Crouch v. State*.[13] In *Crouch*, the Court specifically stated, "The jurisdiction of a justice of the peace, acting as a magistrate, is coextensive with the limits of his county."[14]

The Court of Criminal Appeals held that municipal judges have the power to issue warrants for premises inside the county but outside of the municipality.[15] In *Gilbert v. State*, a municipal judge from Hedwig Village acting as a magistrate issued a search warrant for premises in Houston. Both Hedwig Village and Houston are in Harris County. The Court upheld the issuance of the search warrant, stating "The issuance of the search warrant was within the authority of the magistrate of the Hedwig Village municipal judge."[16]

Neither *Gilbert* nor *Crouch* have received any negative treatment from the Court of Criminal Appeals in regards to the authority of municipal judges or justices of the peace to issue search warrants outside their court's jurisdiction but within the county. In fact, challenges that have come through the appellate pipeline on this issue have generally been stymied in the Courts of Appeal.[17]

In *Bitner v. State*, the Court of Criminal Appeals held that a justice of the peace is not required to physically be in his or her county when signing a search warrant for premises in a county.[18] In *Bitner*, the peace officer prepared a probable cause affidavit in the Olney police department, located in Young County. The peace officer wanted to search premises located in Archer County. After preparing the affidavit, the peace officer contacted a justice of the peace from Archer County via telephone. The justice of the peace stopped at the Olney police department and signed the search warrant. The Court found that the justice of the peace did have the authority to sign the search warrant, even though she was physically outside of Archer County, because the premises to be searched was within Archer County.[19]

Evidentiary Warrants

One exception to the authority of

municipal judges and justices of the peace as a magistrate to issue search warrants is the so-called evidentiary search warrant. An evidentiary search warrant is better understood as a search warrant for items that are "mere evidence." The Code of Criminal Procedure does not define "mere evidence." "Mere evidence" generally refers to items that are not fruits or instrumentalities of a crime but are evidence of an offense or tend to show a particular person committed an offense.[20] Attorney judges of municipal courts of record may issue warrants for "mere evidence."[21] Attorney judges of non-record municipal courts, justices of the peace, non-attorney judges of constitutional county courts, or non-attorney municipal judges may not issue search warrants for "mere evidence" except in very limited circumstances.[22] There is one notable exception, however. Under Article 18.01(i) of the Code of Criminal Procedure, any magistrate may sign a warrant for "mere evidence" in a county where the only attorney judge is a district judge whose district includes more than one county or in a county where the only attorney judges are two or more district judges whose district includes more than one county.[23]

Conclusion

It is important to remember that the county determines the geographical jurisdiction of the municipal judge or justice of the peace acting as a magistrate. A municipal judge or justice of the peace is authorized to issue search warrants for any premises within his or her county. It is not relevant whether the premises to be searched lies within the justice's precinct or the judge's municipality, as long as the premises lies within the justice's or judge's county. Furthermore, it does not matter that the judge or justice is not physically sitting in the county while signing the search warrant, as long as the premises to be searched is within the justice's or judge's county. Finally, except under very limited circumstances, justices of the peace, non-attorney municipal judges and attorney municipal judges in non-record courts may not issue search warrants for "mere evidence."

---

[1] Tex. Code Crim. Proc. Ann. Art. 2.09 (Vernon Supp. 1977).
[2] *French v. State*, 572 S.W.2d 934, 938-39 (Tex. Crim. App. 1977).
[3] Tex. Code Crim. Proc. Ann. Art. 45.017 (Vernon Supp. 1979).
[4] Tex. Code Crim. Proc. Ann. Art. 45.037-45.040 (Vernon Supp. 1979).
[5] Tex. Code Crim. Proc. Ann. Art. 15.17 (Vernon Supp. 1977).
[6] Tex. Code Crim. Proc. Ann. Art. 15.03 (Vernon Supp. 1977).
[7] Tex. Code Crim. Proc. Ann. Art. 18.01 (Vernon Supp. 1977).
[8] Office of Court Administration, *Texas Judicial System Annual Report 2004* (2004) available at http://courts.state.tx.us/publicinfo/AR2004/muni/index.htm.
[9] Office of Court Administration, *Texas Judicial System Annual Report 2004* (2004) available at http://courts.state.tx.us/publicinfo/AR2004/jp/index.htm.
[10] See Office of Court Administration, *Texas Judicial System Annual Report 2004* (2004) available at http://courts.state.tx.us/publicinfo/AR2004/jb/index.htm. (According to the Office of Court Administration, there were 9 Supreme Court justices, 9 Court of Criminal Appeals judges, 80 court of appeals justices, 424 district judges, 254 "Constitutional" county judges, 228 statutory county /probate judges, 827 justices of the peace, and 1325 municipal judges. Note, however, that municipal judges may simultaneously serve as justices of the peace.)
[11] Tex. Code Crim. Proc. Ann. Art. 4.14 (Vernon Supp. 1977); Tex. Gov't Code Ann. Section 29.003 (Vernon 2004).
[12] *Gilbert v. State*, 493 S.W.2d 783, 784 (Tex. Crim. App. 1973); 40 George E. Dix & Robert O. Dawson, Texas Practice: Criminal Practice and Procedure Sec. 6.53 (2nd ed. 2001).
[13] 136 Tex. Crim. 162, 123 S.W.2d 904 (1939); see also *Ex parte Clear*, 573 S.W.2d 224, 228 (Tex. Crim. 1978) (holding that a justice of the peace acting as a magistrate and a district judge acting as a magistrate have concurrent jurisdiction).
[14] *Id.* at 905 (citing *Hinkley v. State*, 119 Tex. Crim. 254, 45 S.W.2d 581 (1931).
[15] *Gilbert*, 493 S.W.2d at 784.
[16] *Id.*
[17] *E.g., Klepper v. State*, No. 05-02-01283-CR (Tex. App.—Dallas Nov. 12, 2003, pet. ref'd)(not designated for publication), 2003 WL 22663508; *Soto v. State*, No. 05-97-00036-CR, 05-97-00037-CR (Tex. App.—Dallas Dec. 30, 1998, no pet.)(not designated for publication) 1998 WL 904942.
[18] *Bitner v. State*, 135 S.W.3d 906, 907-8 (Tex. Crim. 2004).
[19] *Id.* at 907 n.1.
[20] Tex. Code Crim. Proc. Ann. Art. 18.02(10) (Vernon Supp. 1977); see also Texas Municipal Courts Education Center, *2004 Bench Book* 2-10 (2004).
[21] Tex. Code Crim. Proc. Ann. Art. 18.01(c) (Vernon Supp. 1977).
[22] Tex. Code Crim. Proc. Ann. Art. 18.01(c) (Vernon Supp. 1977); 40 George E. Dix & Robert O. Dawson, Texas Practice: Criminal Practice and Procedure Sec. 6.54 (2nd ed. 2001).
[23] Tex. Code Crim. Proc. Ann. Art. 18.01(i) (Vernon Supp. 1977).

Training continued from page 2

the State Commission on Judicial Conduct. In the past, both public and private reprimands have been issued to judges who failed to comply. Last year, the Municipal Courts Education Committee sent the names of four judges to the Court.

The Committee does not accept excuses such as "schedule conflict," "the clerk doesn't forward my mail," and "I didn't know that the training was mandatory" as viable reasons for receiving a waiver. TMCEC programs and the approved alternative programs are offered every month of the year. Experienced judges have 14 TMCEC programs to select from that are rotated to different cities across the State.

Judges: Please register for a program.

Clerks: Please remind your judges of the requirements, especially new judges when they are sworn in.

Case Law continued from page 1

3. Probable Cause

Maryland v. Pringle, 540 U.S. 366 (2003) – Defendant was convicted of drug possession offenses but asserted that a police officer had no probable cause to arrest defendant based on drugs found in a vehicle in which defendant was a passenger. Upon the grant of a writ of certiorari, the State of Maryland appealed the judgment of the Court of Appeals of Maryland, which held that defendant's arrest lacked probable cause. The U.S. Supreme Court held that the officer had probable cause to believe that defendant was in possession of the drugs. It was an entirely reasonable inference that any or all three of the occupants had knowledge of and exercised dominion and control over the drugs, and thus a reasonable officer could conclude that there was probable cause to believe defendant committed the crime of possession of drugs, either solely or jointly. It was also reasonable for the officer to infer a common enterprise among the three occupants, in view of the likelihood of drug dealing in which an innocent party was unlikely to be involved. The judgment holding that defendant's arrest lacked probable cause was reversed, and the case was remanded for further proceedings.

B. 6th Amendment: Confrontation Clause

Crawford v. Washington, 124 S. Ct. 1354 (2004) – Defendant was convicted after a jury trial in the Washington Superior Court of first-degree assault while armed with deadly weapon. Defendant appealed. The Washington Court of Appeals reversed. On review, the Washington Supreme Court reversed and reinstated defendant's conviction. Certiorari was granted. The Supreme Court, Justice Scalia writing for the majority held that: (1) out-of-court statements by witnesses that are testimonial are barred under the Confrontation Clause, unless witnesses are unavailable and defendants had prior opportunity to cross-examine witnesses, regardless of whether such statements are deemed reliable by court, abrogating *Ohio v. Roberts*, and (2) admission of wife's out-of-court statements to police officers regarding incident in which defendant, her husband, allegedly stabbed victim violated the Confrontation Clause. Reversed and remanded. (Chief Judge Rehnquist filed opinion concurring in judgment, in which Justice O'Connor joined.)

C. 14th Amendment: Americans with Disability Act and Access to Courts

Tennessee v. Lane, 124 S. Ct. 1978 (2004) – Disabled citizens brought action against State under Title II of the Americans with Disabilities Act (ADA) seeking to vindicate their right of access to the courts. The U.S. District Court for the Middle District of Tennessee denied the State's motion to dismiss. State appealed. On petition for rehearing, the Court of Appeals affirmed and remanded. Certiorari was granted. The U.S. Supreme Court, Justice Stevens writing for the majority, held that Title II of the ADA, as applied to cases implicating the fundamental right of access to the courts, constitutes a valid exercise of Congress' enforcement power under the 14th Amendment. Affirmed. (Justice Souter filed a concurring opinion, in which Justice Ginsburg joined. Justice Ginsburg filed a concurring opinion, in which Justices Souter and Breyer joined. Chief Justice Rehnquist filed a dissenting opinion, in which Justices Kennedy and Thomas joined. Justices Scalia and Thomas filed dissenting opinions.)

II. Texas Court of Criminal Appeals

A. Jury Disqualification

Nelson v. State, 129 S.W.3d 108, 113 (Tex. Crim. App. 2004) – Empaneling juror despite absolute disqualification for theft (Class C misdemeanor) did not entitle defendant to reversal.

"This appellant could have raised, but did not raise the disqualification before the verdict was entered. He actually did the opposite of raising the issue by telling the court that he had no objection to the disqualified juror. We cannot hold, as the court of appeals did, that the defendant's failure to raise the issue was of no consequence so long as someone raised it. His failure to raise the issue means this judgment of conviction may not be reversed under Article 44.46 [Code of Criminal Procedure]. For these reasons there is no occasion for us to address the court of appeals' holdings on the issue of harm. The judgment of the court of appeals is reversed, and the appeal is remanded to that court so that it may consider the appellant's other points of error."

B. Disqualification of Counsel

Gonzalez v. State, 117 S.W.3d 831, 836 (Tex. Crim. App. 2003) – "The Federal and Texas Constitutions, as well as Texas statute, guarantee a defendant in a criminal proceeding the right to have assistance of counsel. The right to assistance of counsel contemplates the defendant's right to obtain assistance from counsel of the defendant's choosing. However, the defendant's right to counsel of choice is not absolute. A defendant has no right to an advocate who is not a member of the bar, an attorney he or she cannot afford or who declines to represent him or her, or an attorney who has a previous or ongoing relationship with an opposing party. Additionally, while there is a strong presumption in favor of a defendant's right to retain counsel of choice, this presumption may be overridden by other important considerations relating to the integrity of the judicial process and the fair and orderly administration of justice. However, when a trial court unreasonably or arbitrarily interferes

with the defendant's right to choose counsel, its actions rise to the level of a constitutional violation. Therefore, courts must exercise caution in disqualifying defense attorneys, especially if less serious means would adequately protect the government's interests." (See also, Texas Disciplinary Rule of Professional Conduct 3.08)

C. Translators

Garcia v. State, 2004 Tex. Crim. App. LEXIS 519 (3/24/04) – In reversing and remanding, the Texas Court of Criminal Appeals held: (1) the presence of a bilingual individual beside the Spanish-speaking defendant did not satisfy defendant's 6th Amendment right to an interpreter; (2) the defendant was not required to object at trial to lack of interpreter in order to preserve error for appeal; and (3) the trial court's failure to appoint interpreter for defendant violated defendant's 6th Amendment right to confront witnesses.

D. Indigency

Whitehead v. State, 130 S.W.3d 866 (Tex. Crim. App. 2004) – By requiring the courts to formulate procedures and financial standards for determining whether a defendant is indigent, the Legislature has indicated a desire for the appointment of counsel to be more strictly regulated than other matters. Accordingly, a court's power to disbelieve allegations of indigency is limited.

E. Emergency Aid/Community Caretaking

Laney v. State, 117 S.W.3d 854 (Tex. Crim. App. 2003) – Sheriff's deputies responded to a disturbance between neighbors in defendant's mobile home park. Defendant approached the officers, explaining that he had turned off the electricity to a neighbor's trailer in retaliation for the neighbor turning off his. He was placed in the back of the patrol car pending possible charges. Two boys come out of defendant's trailer. Upon being asked if he had ever been arrested, defendant said he had been arrested for indecency with a child. One boy said his brother was in the back bedroom. The deputy entered the trailer and found photographic reproductions of boys engaging in deviant sexual contact. The defendant was convicted of possessing child pornography. The Texas Court of Criminal Appeals held: (1) officer's warrantless entry into defendant's mobile home was objectively reasonable, as required under the emergency-aid version of the community caretaking doctrine, and (2) the warrantless entry and search were strictly circumscribed by the exigencies that justified their initiation.

III. Municipal Courts and Related Law (Kind of)

A. Motions to Suppress

Sanchez v. State, 138 S.W.3d 324 (Tex. Crim. App. 2004) – Defendant was charged in the Dallas Municipal Court with a consumer affairs violation. On the day the case was set for trial, defendant made an oral motion to quash the complaint, which was granted. The judgment was affirmed on appeal, and the State again appealed. The Dallas Court of Appeals affirmed and overruled the State's motion for rehearing. The State filed a petition for discretionary review. On review, the State contended that the phrase "before the date on which the trial on the merits commences" under Article 45.019(f), Texas Code of Criminal Procedure, should have been construed to mean that defendant had to make a motion to quash before the date on which the case was set or scheduled for trial.

The Texas Court of Criminal Appeals disagreed, holding that Article 45.019(f) meant what it said, that a party could move to quash a charging instrument at any time prior to the day on which the trial on the merits commenced. Thus, defendant's motion to quash filed on the day the case was set for trial was timely.

B. Judgments and *Capias Pro Fines*

Jones v. State, 119 S.W.3d 766, 786 (Tex. Crim. App. 2003) – "While a *capias[pro fine]* is issued after a judgment has been rendered against the defendant, it must still be supported by probable cause. But because a judgment against a defendant signifies a finding beyond a reasonable doubt that he has committed the charged offense, we have held in the context of a parole violation that a judgment coupled with a finding by the court that there is a 'reason to believe' that the defendant has violated the conditions of his parole will constitute sufficient probable cause to support the issuance of a parole violation warrant. While a traffic violator, unlike a parolee, is not subject to a judgment imposing a term of imprisonment, the judgment establishing the traffic violation nonetheless carries considerable weight and validity because it is based upon a finding beyond a reasonable doubt. Thus, a judgment for a traffic violation, together with a finding by the court that the defendant has failed to satisfy its terms, will comprise sufficient probable cause to support issuance of the *capias pro fine."*

C. Appeals

1. From Record Courts

Preston v. State, 2004 Tex. App. LEXIS 7217 (Corpus Christi 8/12/04) – The record on appeal from a municipal court of record must substantially conform to rules governing appellate records under the Texas Rules of Appellate Procedure, Texas Code of Criminal Procedure, and Section 30.00016, Government Code.

2. From Non-Record Courts

Alley v. State, 137 S.W.3d 866 (Tex. App.–Houston [4th] 2004) – Pretrial

appeals by the State in non-record courts governed by Chapter 45 of the Code of Criminal Procedure must be heard by the county court or designated court, not a court of appeals.

3. Barred by Satisfaction of Judgment

Crawford v. Campbell, 124 S.W.3d 778 (Tex. App.–Houston [1st] Dist 2004) – In a public intoxication case, the fact that defendant complied with the statutory requirements for filing an appeal from the municipal court judgment did not entitle him to an appeal. Voluntary payment of $15 beyond bond (used to secure appearance and payment in the event of non-appearance) satisfied the judgment by paying his fine and rendered the appeal of judgment moot. (Conviction did not constitute a collateral consequence.)

D. Double Jeopardy

Ex parte King, 134 S.W.3d 500 (Tex. App.–Austin 2004) – Granting motion to suppress in municipal court does not entitle petitioner to *habeas corpus* relief in county court after county court refused to suppress evidence stemming from the same event considered by the municipal court. The denial of the individual's petition for *habeas corpus* relief was proper, where her claim for *habeas corpus* relief did not implicate the constitutional protections afforded under the Double Jeopardy Clause.

E. Municipal Judges

1. Reappointment

Willmann v. City of San Antonio, 123 S.W.3d 469 (Tex. App.–San Antonio 2003) – Appellants, municipal judges, sued the City of San Antonio, alleging that the ordinance that included recommendations for the appointment of new judges was void, as meetings held by the city council committee violated the city charter and the Texas Open Meetings Act (TOMA). The City prevailed in the trial court. On review, the judges contended that the trial court erred in granting the City's motion for partial summary judgment and challenged the trial court's judgment that the ordinance in question did not violate Texas Constitution Article XVI, Section 17. The appellate court found that the ordinance effectively removed the judges from office and that there were the same number of judges after the plaintiff judges' terms had expired as there were when they were in office. Thus, no vacancy occurred in the office of municipal judge resulting in public inconvenience to warrant the application of Section 17. The appellate court, however, also found that the judges raised a genuine issue of material fact with regard to whether the city council violated the TOMA (as letters informing the judges that they would not be reappointed suggested an assumption by the committee that its decision was final and, therefore, not advisory). Further, there was no substantive discussion regarding the various applicants at the open meeting. As such, the trial court erred in granting the City's no-evidence motion for partial summary judgment. Accordingly, the part of the judgment granting the city's partial motion for summary judgment on the judges' open meetings violation claim was reversed and remanded to the trial court for further proceedings. The remaining portions of the judgment were affirmed.

2. Whistle Blower Lawsuits

Stockman v. City of Roman Forrest, 141 S.W. 805 (Tex. App.–Beaumont 2004) – Municipal judges are political appointees, not city employees. As they are not "employees," they are not able to sue under the Texas Whistle Blowers Act.

F. City Attorneys and Municipal Prosecution

1. Prosecuting Appeals: Who is the State?

State v. Blankenship, 2004 Tex. Crim. App. LEXIS 1651(10/6/04) – Defendant was convicted in the Austin Municipal Court for violation of two city ordinances. A county court reversed that decision, and the State appealed. The notices of appeal were signed by an assistant city attorney and not by the county attorney. The Austin Court of Appeals dismissed the appeal, holding that "the county attorney was required to actually 'make' the appeal himself." The Texas Court of Criminal Appeals reversed. The Court held that in the City's timely amended notice of appeal, the county attorney had consented to the city attorney prosecuting the appeal. The notice constituted a written express personal authorization by the county attorney of the particular case. It was not a general delegation of authority to an assistant, and it was more than a signature stamp. The Texas Court of Criminal Appeals thus rejected the argument of the Court of Appeals that such a notice of appeal could not simultaneously comply with Articles 45.201 and 44.01(d), Code of Criminal Procedure.

2. Malicious Prosecution

Gunnels v. City of Brownwood, 2003 Tex. App. LEXIS 9981 (11/24/03) – Affirming summary judgment, the Amarillo Court of Appeals held that the plaintiff did not establish as an element of malicious prosecution that it was city custom, practice or policy to prosecute municipal court cases without probable cause and that the evidence did not establish differential treatment that was invidious or an element of selective prosecution in violation of equal protection. On motion for rehearing, the court further held that the plaintiff failed to preserve appellate review of argument that there was no evidence that cars on which

handbills were placed were on city streets and that city therefore lacked probable cause for prosecuting her.

3. Attorney/Client Privilege

State v. Martinez, 116 S.W.3d 385 (Tex. App.–El Paso 2003) – Defendant, who was a deputy police chief, was charged with aggravated perjury based on inconsistencies between his statements to detectives and his recorded conversations with an assistant city attorney. The defendant moved to suppress all evidence obtained from the city attorney. The district court entered an order excluding defendant's written, sworn statement to grand jury, based upon attorney-client privilege. The State appealed. The El Paso Court of Appeals affirmed. The State appealed. The Texas Court of Criminal Appeals affirmed in part and reversed in part. On remand, the El Paso Court of Appeals held that: (1) the defendant's conversations with the assistant city attorney and any fruits stemming from the conversation were protected by attorney-client privilege, and (2) the crime-fraud exception did not apply to pierce attorney-client privilege to require disclosure of protected statements. Affirmed.

G. Ordinances

1. Void for Vagueness

State v. Guevera, 137 S.W.3d 55 (Tex. Crim. App. 2004) – Defendant was found guilty by the San Antonio Municipal Court of allowing patrons to queue in front of her restaurant on public right of way along the Riverwalk. The Fourth Court of Appeals found that defendant was not guilty of violating the ordinance, that the ordinance was unconstitutional and unenforceable, and that the map referred to in the ordinance was vague. The State appealed. In reversing the Court of Appeals, the Texas Court of Criminal Appeals found that the ordinance did not affirmatively impose on those subject to it the duty to adopt a particular system to prevent the queuing of patrons waiting for tables. Further, the Court found that the fact that the ordinance did not suggest a method of preventing queuing was of no significance. There were commonsense methods for preventing queuing, and it was not necessary or desirable to require the city to codify those methods. The judgment was reversed, and the case was remanded for further proceedings.

2. Sexually Oriented Business

Taylor v. State, 117 S.W.3d 848 (Tex. Crim. App. 2003) – Defendant was convicted of acting as a manager of a sexually oriented enterprise without a permit. Defendant appealed. The Houston Court of Appeals affirmed. Defendant petitioned for discretionary review. The Texas Court of Criminal Appeals held that: (1) evidence reasonably supported inference that defendant was onsite manager of sexually oriented enterprise, and (2) construing defendant to be onsite manager did not render definition of employee in city ordinance meaningless.

3. Commerce Clause

Shannon v. State, 129 S.W.3d 670 (Tex. App.–Houston [1st] 2004) – The City of Houston passed a series of ordinances to regulate the transportation and treatment of certain non-hazardous wastes. The issue presented was whether the dormant Commerce Clause prohibited the City from passing an ordinance requiring transporters of non-hazardous waste to pay a flat fee to obtain the necessary licenses and permits required to pick up waste originating within the city limits. Defendant argued that the City's permit and registration fees were unconstitutional under the Commerce Clause of the U.S. Constitution. Upon reconsideration of its initial opinion, the appellate court ruled that the $50 permit fee and the $400 registration decal fee were unconstitutional because the out-of-state transporter who made just one entry a year into the city to load waste had to pay the same fee as a local hauler who loaded waste in the city on a daily basis. Also, transporters would be encouraged to conduct only local transport of waste, rather than attempt to pay the multiple registration fees necessary to conduct their business on an interstate basis.

4. Constitutionality of Bicycle Path Ordinance

Toma v. State, 126 S.W.3d 528 (Tex. App.–Houston [1st] 2003) – Municipal ordinance prohibiting persons from riding a bicycle on the street when a bicycle path is available is neither vague nor unconstitutional.

5. Application in Extraterritorial Jurisdiction

Hartsell v. Town of Talty, 130 S.W.3d 325 (Tex. App.–Dallas 2004) – Chapter 245 of the Texas Local Government Code prohibits application of the Town's ordinance extending its building code to its extraterritorial jurisdiction to appellants' projects that were approved before the ordinance was enacted.

6. Mistaken Variance

City of Dallas v. Vanesko, 127 S.W.3d 220 (Tex. App.–Dallas 2003) – Homeowner whose plans were mistakenly approved by building inspector was entitled to roof variance.

H. Substantive Law

1. Proof of Financial Responsibility

Sanchez v. State, 137 S.W.3d 860 (Tex. App.–Houston [1st] 2004) – Evidence was insufficient to support conviction where defendant was asked to provide "insurance" rather than proof of financial responsibility under Chapter 601 of the Transportation Code.

2. Littering

***Romero v. State*,** 129 S.W.3d 263 (Tex. App.–El Paso 2004) – Municipal court defendant's convicted for public nuisance did not bar subsequent prosecution for state offense of illegal

dumping. The defendant's behavior in allowing waste to remain on the property and allow further dumping constituted admissible proof of required reckless mental state (dumping a strict liability offense as of 9/1/01).

3. Authority to Establish Speed Limits

Brazoria County v. Texas Commission on Environmental Quality, 128 S.W.3d 728 (Tex. App.–Austin 2004) – TCEQ has authority to issue environmental speed limits to protect air quality and the authority to revise procedures for setting such speed limits.

4. Disorderly Conduct

Coggins v. State, 123 S.W.3d 82 (Tex. App.–Austin 2003) – Appellant claimed that the Texas disorderly conduct statute (Section 42.10, Penal Code) was facially unconstitutional by impermissibly restricting protected free speech, void for vagueness and over breadth, and unconstitutional as applied by punishing protected free speech (specifically, "shooting the bird"). The appellate court held that the conduct proscribed under Section 42.01(a)(2) fell within the "fighting words" exception and did not violate rights of free speech and expression. Nor was the statute too vague for a criminal law; given the common, plain definitions of the words in the statute, it did not fail to give a person of ordinary intelligence a reasonable opportunity to know what was prohibited. However, the court also found that, although the gesture may have been provocative, there was no evidence that the complainant was moved to violence or restrained himself from retaliating. Given the brief exposure to the gesture as one car passed the other, made stranger to stranger, causing momentary hostility on the complainant's part, the appellate court held that defendant's conduct did not tend to incite an immediate breach of the peace. The conviction was reversed, and a judgment of acquittal was rendered.

IV. Procedural Law

A. Disqualification and Recusal of Judges

1. Anti-Bribery Oath

Espinosa v. State, 115 S.W.3d 64 (Tex. App.–San Antonio 2003) – Defendant argued that the present proceeding, as well as prior proceedings being used to enhance the present offense, were null and void, as persons involved in the cases had not taken the anti-bribery oath required by the Texas Constitution, and the judge and others had not filed the oaths with the Secretary of State. The Court of Appeals rejected defendant's argument. Defendant's claim that the trial judge was not qualified to act could be raised only in a *quo warranto* proceeding, not a collateral attack. Further, the judge had taken the oath, and the fact that it had not been filed did not affect the judge's ability to act.

2. Strategic Suits

In re Lincoln, 114 S.W.3d 724 (Tex. App.–Austin 2003) – The mere filing of a lawsuit against a judge does not encumber that judge with the type of certain and immediate, personal or pecuniary stake in the underlying litigation that prevents the judge from deciding the case. Suing a judge by itself is an insufficient basis for disqualification or recusal of that judge.

B. Evidentiary Issues

1. Life after *Hernandez*

Holmes v. State, 135 S.W.3d 178, 185-186 (Tex. App.–Waco 2004) – "But a party seeking to introduce evidence of a scientific principle need not always present expert testimony, treatises or other scientific material to satisfy the first two criteria of the *Kelly* test. *Hernandez v. State* 116 S.W.3d 26, 28-29 (Tex. Crim. App. 2003). It is only at the dawn of judicial consideration of a particular type of forensic scientific evidence that trial courts must conduct full-blown "gatekeeping" hearings under *Kelly*. Trial courts are not required to reinvent the scientific wheel in every trial. Some court, somewhere, has to conduct an adversarial gatekeeping hearing to determine the reliability of the given scientific theory and its methodology. There is no "bright line" judicial rule for when a scientific theory or technique becomes so widely accepted or persuasively proven that future courts may take judicial notice of its reliability. However, if the Court of Criminal Appeals, this Court, or another Texas appellate court has already determined the validity of a particular scientific theory or technique, then the party offering the expert testimony need not satisfy *Kelly's* first two criteria. The trial court and a reviewing court can rely upon prior opinions and take judicial notice of those findings." (Citations omitted.)

2. Hearsay/Admission of Videotape

Cheek v. State, 119 S.W.3d 475 (Tex. App.–El Paso 2003) – Defendant was convicted of intentionally causing bodily injury to her 14-month-old daughter. Defendant appealed. The Court of Appeals held that the videotaped interview of child witness, which contained statement from witness that defendant's boyfriend injured victim, was not admissible under business records exception to hearsay rule. Under the business records exception to the hearsay rule, a record kept in the course of a regularly conducted business activity is admissible if it was made at or near the time of the event recorded by a person who had both personal knowledge of the event and a business duty to report the event. Affirmed.

C. Defendant's Rights at Trial

Romero v. State, 136 S.W.3d 680 (Tex. App.–Texarkana 2004) – Defendant's right to confrontation was violated when adverse witness testified in "disguise." (The Texas Court of Criminal Appeals granted review of this case on September 22, 2004. TMCEC will keep you updated.)

D. Waiver of Appeals

Hargesheimer v. State, 126 S.W.3d 658 (Tex. App.–Amarillo 2004) – Pre-sentence waiver of right to appeal from proceedings to revoke community supervision when there was no bargain or recommendation as to punishment was invalid as matter of law.

E. Expunction

State v. Bhat, 127 S.W.3d 435 (Tex. App.–Dallas 2004) – Arrestee sought expungement of all records relating to his arrest for assault. The district court issued an order of expunction. The State appealed. The Court of Appeals held that the arrestee was not entitled to expunction, because the limitations period for prosecuting him for assault had not expired. Reversed and rendered.

F. Bond Forfeiture

1. "Uncontrollable Circumstances"

Castaneda v. State, 138 S.W.3d 304 (Tex. Crim. App. 2004) – State filed motion to impose forfeiture liability against bail bonding company after principals were deported. The "Jail Court" granted the motion and the surety appealed. The Corpus Christi Court of Appeals affirmed. The surety filed petition for discretionary review. On review, the surety argued that he was entitled to exoneration from liability pursuant to Article 22.13(3), Code of Criminal Procedure, because the principals' failure to appear for their court settings was a result of an uncontrollable circumstance that arose through no fault of either the principals or the surety. The Texas Court of Criminal Appeals held: (1) bonding company was released from liability for bond posted for one principal; (2) bonding company was not released from liability for bond posted for second principal; (3) uncontrollable circumstances could not be deemed sufficient to exonerate principal and his sureties from liability for bail bond forfeiture. On rehearing, the Court also held: (1) that the bail bonding company failed to deliver adequate notice to sheriff that three principals were incarcerated in federal custody; and (2) evidence supported finding that uncontrollable circumstances did not prevent appearance of those three principals. Affirmed in part and reversed in part.

2. Appealing Bond Forfeiture

Casper v. State, 127 S.W.3d 370 (Tex. App.–Beaumont 2004) – Appellate jurisdiction in bail bond forfeiture cases is described by Article 44.12, Code of Criminal Procedure. "An appeal may be taken by the defendant from every final judgment rendered upon a personal bond, bail bond or bond taken for the prevention or suppression of offenses, where such judgment is for $20 or more, exclusive of costs, but not otherwise." Here, the judgment exclusive of costs was for less than $20. Therefore, the Court of Appeals held that it lacked jurisdiction to consider the merits of the judgment forfeiting a bond that was less than $20. The appeal was dismissed.

3. Going "Off Bond"

Maya v. State, 126 S.W.3d 581 (Tex. App.–Texarkana 2004) – The accused hired the bond company to post bond on his behalf, and the accused failed to appear for a hearing. A warrant was issued for the accused's arrest, and the bond posted by the bond company was ordered forfeited to the State. A judgment *nisi* was signed the same day, and service was executed October 18, 2003. At trial on the judgment *nisi*, the bond company asserted it should not be held liable for the bond. Before the issuance of the forfeiture, the bond company stated it filed an affidavit to "go off bond" and the trial court failed to act upon the affidavit before the accused's failure to appear. The bond company requested that the Court of Appeals reverse the trial court's judgment of forfeiture and hold that the mere filing of an affidavit to go off bond presented an affirmative defense to the forfeiture suit in the present case. The appellate court ruled that there was no evidence in the record to show that the trial court denied or otherwise refused to grant the affidavit to go off bond. There was no evidence in the record to show the affidavit to go off bond was presented for the trial court's approval or refusal, pursuant to Article 17.19, Code of Criminal Procedure.

4. Judgment *Nisi*

Williams v. State, 114 S.W.3d 703 (Tex. App.–Corpus Christi 2003) – Genuine issue of material fact, whether the State mailed judgment *nisi* to principal and precluded summary judgment. The Court of Appeals reversed the summary judgment and remanded the case for further proceedings.

V. Magistrate Issues

A. Warrants

1. *Swearingen v. State*, 2004 Tex. Crim. App. LEXIS 1017 (6/23/04) – The Texas Court of Criminal Appeals acknowledges different standards of review of searches: warrantless searches and magistrate issued search warrants.

2. *Bitner v. State*, 135 S.W.3d 906 (Tex. App.–Fort Worth 2004) – Affirming the judgment of the trial court, the Fort Worth Court of Appeals held that a justice of the peace, in her capacity as a magistrate, was authorized to sign a search warrant for property located within the magistrate's county even though the magistrate was outside of that

geographical jurisdiction when she signed the search warrant.

3. ***Cardona v. State***, 134 S.W.3d 854 (Tex. App.–Amarillo 2004) – The specialized knowledge of a particular magistrate or affiant may not be imputed into the affidavit. Again, the rule of law prohibits us from perusing beyond the four corners of the document.

4. ***De La O v. State***, 127 S.W.3d 799, 801 (Tex. App.–San Antonio 2003) – Absence of a copy of search warrant from clerk's file did not establish that blood sample was taken without valid warrant. "If the State intends to justify a search or arrest on the basis of a warrant, it is incumbent on the State to produce the warrant and its supporting affidavit for inspection by the trial court. This procedure allows the trial court to review the documents and determine whether probable cause exists and whether the accused's rights have been protected. Courts have excused the State from compliance with this production requirement if the State introduces testimony from the magistrate who issued the warrant, the officer who presented the probable cause affidavit for the warrant, or another witness familiar with the factual basis for the warrant. Presentation of such other evidence suffices if the accused has the opportunity to cross-examine the witness concerning the validity of the warrant and the trial court has adequate opportunity to determine whether probable cause existed." (Citations omitted.)

5. ***Cates v. State***, 120 S.W.3d 352, 355 (Tex. Crim. App. 2003) – Defendant proved that if the false portions of a search warrant affidavit were excised, the remainder of the affidavit lacked probable cause.

B. Bail

1. ***Ex parte Durst***, 2004 Tex. App. LEXIS 7560 (Tex. App.–Houston [14th] 2004) – Defendant was charged with two counts of felony bail jumping and failure to appear and one count of tampering with evidence. After bond was set in each case at one billion dollars, defendant filed applications for writs of *habeas corpus*, challenging the bond amounts. The District Court denied the applications, and defendant appealed. The Court of Appeals reversed, holding the bail amount to be unconstitutionally excessive, and remanded the case to the trial court to reset bail in the amount of $150,000 for each offense, resulting in a total of $450,000.

2. ***Ex parte Scott***, 122 S.W.3d 866, 871 (Tex. App.–Fort Worth 2003) – Magistrate set bond on defendant accused of aggravated kidnapping at $100,000. Defendant sought *habeas* relief from trial court, which was denied. On appeal, the Court of Appeals stated: "[a]ffording due deference to the trial court's ruling, we cannot say that the trial court acted arbitrarily or unreasonably by denying a reduction in the amount of *Scott's* bond. Although the bond is high, *Scott* has failed to demonstrate that the bond set is excessive… . Based on the nature and circumstances of the offense, concerns regarding the safety of the victim, the absence of evidence regarding *Scott's* community ties, and his ability to make bond, the trial court could have properly concluded that *Scott's* bond of $100,000 was reasonable. Because we hold that the trial court did not abuse its discretion in denying *Scott's* request for bond reduction, we overrule *Scott's* three points. We therefore affirm the order denying *habeas corpus* relief." (Citations omitted.)

3. ***In re Henson***, 120 S.W.3d 926 (Tex. App.–Texarkana 2003) – Article 17.33, Code of Criminal Procedure does not mandate that magistrates review statements and evidence in setting bail.

VI. Search and Seizure

A. Traffic Arrests

Berrett v. State, 2004 Tex. App. LEXIS 4393 (Tex. App. Houston [14th] 2004) – Under both the Code of Criminal Procedure and the Transportation Code, a peace officer, in lieu of a custodial arrest (which requires promptly taking the arrestee before a magistrate), may issue a citation or notice to appear before a magistrate to a defendant who commits a Class C misdemeanor. The Code of Criminal Procedure is silent as to whether a citation requires an alleged offender's promise to appear. However, before officer may issue a citation and release defendant charged with violating Transportation Code, the defendant must sign a promise to appear before a magistrate. If defendant does not promise to appear, the officer is under no duty to release him or her, but could choose to take defendant immediately before a magistrate.

B. School Searches by Non-Peace Officer

In re KCB, 141 S.W.3d 303 (Tex. App. Austin 2004) – A high school hall monitor received an anonymous tip from a student that the juvenile had a plastic bag containing marihuana in his underwear. The juvenile was escorted to the assistant principal's office where the monitor told the juvenile about the tip. The monitor asked the juvenile to lift up his shirt, at which time the assistant principal approached the juvenile and extended the elastic on the juvenile's shorts. Observing a plastic bag in the juvenile's waistline, the assistant principal removed it, and the juvenile was later arrested for possession of marihuana. In reversing the adjudication of the juvenile as a delinquent, the court held that the assistant principal lacked reasonable suspicion to search student's person.

C. Reasonable Suspicion (one wrapper at a time)

LeBlanc v. State, 138 S.W.3d 603 (Tex. App.–Houston [14th] 2004) – After the defendant's truck was stopped by police, he initially consented to a partial search of the truck, but later withdrew his consent. In the bed of the truck, police found three round balls (which tested positive for methamphetamine) and hypodermic needles. On appeal, defendant challenged whether the deputies had probable cause or reasonable suspicion to continue to detain him after the original purpose of the traffic stop had expired. He claimed the trial court erred in denying his motion to suppress because the State failed to show the deputies had probable cause to detain him after the conclusion of the initial traffic stop. The Court of Appeals held that the State only needed to show reasonable suspicion to support a detention. (Part of the reasonable suspicion included fast food wrappers on the floorboard of the automobile.) Based on the review of the totality of the circumstances and in light of the officers' experience and knowledge, the Court found that the deputies had sufficient reasonable suspicion to justify the short detention of defendant from the time the citation was issued until the deputy retrieved his canine from the patrol car at the scene.

D. "Plain Feel" of Crack Pipe

Sturchio v. State, 136 S.W.3d 21 (Tex. App.–San Antonio 2002) – A police officer observed defendant walking up and down a street carrying a gasoline can. Defendant would approach cars occupied by men and hold brief conversations with the occupants of the vehicle. The officer, who had 15 years experience and who was assigned to a task force targeting prostitution, detained defendant on suspicion of prostitution. The officer found a crack pipe in the zipper of defendant's pants while searching defendant for weapons. The officer found crack cocaine hidden in defendant's bra while searching defendant incident to arrest for possession of the pipe. The appellate court held that both the initial detention and the pat-down search were valid. The officer had, however, exceeded the permissible scope of a *Terry* search because the incriminating nature of the crack pipe could not reasonably have been apparent to the officer based on the "plain feel" of the pipe, and the officer was not justified in reaching into defendant's pants to retrieve the pipe. Defendant's arrest was, therefore, unlawful and the cocaine found in defendant's bra was not discovered pursuant to a lawful search incident to arrest.

E. Fruit of Poisonous Tree

State v. Bagby, 119 S.W.3d 446 (Tex. App.–Tyler 2003) – Taint of illegal search of shed not sufficiently attenuated by subsequent execution of written consent.

F. Community Care Taking/Failure to Maintain Lane

Eichler v. State, 117 S.W.3d 897 (Tex. App.–Houston [14th] 2003) – The State did not carry its burden of demonstrating the reasonableness of the stop on the basis of a suspicion that defendant failed to drive within a single lane, nor did the State show that the stop was justified as part of the police officer's community care taking function.

G. Cell Phone Tip/Investigatory Stop

Pipkin v. State, 114 S.W.3d 649 (Tex. App.–Fort Worth 2003) – An informant called the police on his cell phone and told them that defendant was driving extremely slow on the freeway and was smoking crack cocaine while driving. A police officer did not recall seeing any traffic violations, but stated that he pulled defendant over based on the informant's observations of defendant. During a search of the vehicle after another officer saw defendant throw a rock of cocaine to the ground, the police found another rock of cocaine, rolling papers, a glass tube, and a lighter in the center console of the vehicle. The information that the informant gave the dispatcher not only allowed the officer to confirm that he was approaching the correct vehicle, but also ensured that the informant's identity could be verified. Accordingly, the investigatory stop based on cell phone tip was justified.

H. Peace Officer Immunity

Cherqui v. Westheimer St. Festival Corp., 116 S.W.3d 337 (Tex. App.–Houston [14th] 2003) – Homeowner who was injured while being ticketed for violating temporary no-parking zone sued the City of Houston, Westheimer Street Festival Corporation and the police officer for negligence. The 215th District Court granted defendants a directed verdict, and the homeowner appealed. The Houston 14th Court of Appeals, held that: (1) the street festival corporation was not vicariously liable for officer's alleged negligence; (2) the homeowner's injuries were not a foreseeable result of alleged negligent placement of temporary no-parking signs, for purposes of determining whether city was liable under the Tort Claims Act; and (3) the police officer acted in good faith, for purposes of determining whether officer was entitled to official immunity. Affirmed.

VII. Removal of Judges

A. *In re Bartie*, 138 S.W.3d 81 (Tex. Rev. Trib 2004) – Texas State Commission on Judicial Conduct recommended that judge be removed as justice of peace, and that judge be forever barred from holding judicial office. Judge appealed. The Review Tribunal held that: (1) evidence was sufficient to support recommendation;

Case Law continued on page 16

Clerks' Role in Judgments and *Capias Pro Fines*

By Margaret Robbins, Program Director, TMCEC

Judges may order the prosecutor, defense attorney or court clerk to prepare a judgment. (Article 42.01, Sec. 2, C.C.P.) In municipal court, the judge generally orders the clerk to prepare the judgment. Preparing a judgment form means that the clerk fills out the case information and has the form ready for the judge's review and signature.

A judgment is required for every case in municipal court. (Article 42.01, Sec. 3, C.C.P.) It could be a judgment of guilty ordering a fine and costs paid, a judgment of not guilty (an acquittal) or a dismissal judgment. The defendants might have mailed or delivered pleas and/or fine payments to the court. The defendants may have appeared in open court. The defendants may have pled guilty or no contest or have been found guilty or not guilty at a trial. The defendant may have had a defense to the prosecution or may have remedied a defect. In all these cases, there must be a signed judgment.

Also, at the end of deferred disposition, the court must enter a judgment either of dismissal or of guilty if the defendant failed to complete the terms of the deferral. (Article 45.051(c) and (d), C.C.P.) When a court grants a request for a driving safety course, the court enters a judgment but defers imposition of the judgment for 90 days so that the defendant can take a driving safety course. (Article 45.0511(c), C.C.P.) At the end of the driving safety course if the defendant completes the course, the court removes the prior judgment and enters a judgment dismissing the case. (Article 45.051(l), C.C.P.) If the defendant fails to complete the course, the court enters a judgment imposing the fine.

After the judge signs the judgment, the clerk must enter the judgment in the docket. (Article 45.017, C.C.P.) After the judgment is recorded in the docket, the clerk files the judgment with the case file unless the court has the technology in which a judge signs documents electronically and the document is stored electronically.

If the judge grants time payment or an extension, these orders are incorporated as part of the judgment and filed with the judgment. If the judge orders the judgment satisfied by performing community service, this order is incorporated as part of the judgment. (Article 45.041, C.C.P.) As custodian of the court records, clerks must ensure that all court orders are properly filed and maintained. Clerks are responsible for managing the case to make sure the defendant complies with the court's orders. If a defendant fails to make a payment or perform community service, the clerk brings this to the attention of the judge.

When a defendant fails to pay the judgment or satisfy the judgment in a manner ordered by the court, the enforcement tool is the *capias pro fine*. *Jones v. State*, 119 S.W.3d 766, 786 (Tex. Crim. App. 2003) summarized on page 7 of this newsletter points out the importance of judgments and the significance of probable cause when issuing a *capias pro fine*. In *Jones,* the Court stated that judgments in traffic violations are based upon "a finding beyond a reasonable doubt." The Court further adds, "[t]hus, a judgment for a traffic violation, together with a finding by the court that the defendant has failed to satisfy its terms, will comprise sufficient probable cause to support issuance of the *capias pro fine*."

What does all this mean for the clerk and the judge? The following steps are suggestions for clerks to help them determine that the judge has proper documentation before issuing a *capias pro fine*.

- Clerks should determine that there is a signed judgment for the case. [See the TMCEC *Forms Book* for sample judgment forms. A judge's notations on the court's docket do not constitute a valid judgment. See *Ex parte Winford* 85 S.W. 1146 (Tex. Crim. App. 1905).]
- Clerks should determine that the court's order for time payment, an extension or community service are filed with the judgment.
- Clerks should review the file for documentation on payment receipts or for information from the community service provider.
- Clerks should determine what type of documentation the judge requires for review before issuing a *capias pro fine*. For example:
  - the case file with all the documentation; or
  - an affidavit from the clerk, that the clerk, as custodian of the

Capias pro fine ***continued on page 16***

CAPIAS PRO FINE **WARRANT**

CAUSE NUMBER: _____

STATE OF TEXAS	§	**IN THE MUNICIPAL COURT**
VS.	§	**CITY OF _____**
_____	§	**_____COUNTY, TEXAS**

To the Chief of Police of the City of _____ or any peace officer of the State of Texas – GREETINGS:

Whereas on the _____ day of _____, 200__, before Judge _____ of Municipal Court of the City of _____, Texas, _____, Defendant, date of birth _____, Texas driver's license number _____, was convicted of the offense of: _____ and a judgment was rendered by said Court in favor of the State, against said Defendant for the sum of $_____ and all costs of court; and there is due and unpaid of said judgment the amount of $_____.

The Court hereby finds that the said Defendant has defaulted and failed to wholly satisfy the judgment in the above styled case.

You are therefore commanded to bring said Defendant before the Municipal Court of the City of _____, Texas or place him or her in jail until (he)(she) can be brought before the Court without delay. You are commanded to notify the Court immediately upon arrest of the Defendant.

In witness whereof, I have hereunto set my hand at my office in the Municipal Court of the City of _____, Texas this _____ day of _____, 200__.

_____
Judge, Municipal Court

OFFICER'S RETURN

Came to hand the _____ day of _____, 200__, at _____ o'clock ___.m. Executed on the _____ day of _____, 200__, at _____ o'clock ___.m. the same by arresting _____, the named Defendant.

_____
Arresting Officer

Capias pro fine ***continued from page 14***

records has reviewed the case file and determined that the proper documentation is in the file.

After the clerk brings the documentation to the judge, *Jones* provides that the judgment, along with a finding by the court that the defendant failed to satisfy the terms of the judgment, will be sufficient probable cause to support the issuance of the *capias pro fine*.

Before issuing the *capias pro fine,* judges should review the documentation presented by the clerk to determine that the defendant did not pay the fine. As a practical matter, clerks should have the *capias pro fine* prepared for the judge's signature ready at the time of presenting the case to the judge.

After the judge issues the *capias pro fine*, clerks are responsible for coordinating the service of the *capias pro fine* with the police department.

See page 15 in this newsletter for a sample of the *capias pro fine*. Because of *Jones*, this form has been revised and replaces the form in the 2004 TMCEC *Forms Book*.

Information for the Public

TMCEC has revised its court procedures pamphlet. It has been divided into two handouts—one for adult procedures and one for juvenile procedures. Copies may be found on the TMCEC website:

www.tmcec.com

or call TMCEC for a copy (800/252-3718).

Case Law continued from page 13

and (2) Commission did not exceed its authority in investigating allegations of judicial misconduct by impermissibly providing legal assistance to various complainants. Affirmed.

B. ***In re Chacon***, 138 S.W.3d 86 (Tex. Rev. Trib 2004) – Texas State Commission on Judicial Conduct recommended that judge be removed as justice of peace, and that judge be prohibited from holding state judicial office in future. Judge appealed. The Review Tribunal held that: (1) sufficient evidence supported Commission's conclusions that judge's conduct constituted incompetence in performance of her official duties and willfully or persistently allowed her improper relationships to influence her judgment in performance of her duties; and (2) judge's conduct warranted that she be removed as justice of peace and be prohibited from holding state judicial office in future. Affirmed.

Collections continued from page 20

failure to comply;

- the defendant is removed from a payment plan and assigned to a community service program to eliminate the balance of court costs, fees and fine owed; or
- the collections staff employs skip tracing to locate the defendant or an arrest warrant is issued.

5. Warrants

When all other collection efforts have failed, the collections coordinator or compliance officer should refer a case to the court requesting that a *capias pro fine* or other appropriate warrant for the failure to appear or comply be issued for a defendant's arrest. Recommending arrest is a serious matter. The recommendation should come reluctantly and after careful analysis and consideration. The collections coordinator or department should provide the court with proof and documentation of its efforts to collect court costs, fees and fines.

Article 43.03(d)(1), C.C.P., provides that before a defendant can be confined for not paying a fine and costs, the court must hold a hearing (also see Article 45.046, C.C.P., for additional information regarding defendant indigency specific to municipal courts). A court may not order a defendant confined unless the court at a hearing:

- determines that the defendant is not indigent or determines that the defendant willfully refused to pay or failed to make sufficient *bona fide* efforts legally to acquire the resources to pay, and enter that determination in writing in the court docket; and
- determines that no alternative method of discharging fines and costs provided by Article 43.09, C.C.P., is appropriate for the defendant (also see Article 45.049, C.C.P., which is the specific community service statute for municipal courts).

Debt Collection Laws

Many of the practices recommended for use by collections staff, when communicating with defendants and others, are based on the Texas Debt Collection Act (V.T.C.S. Arts. 5069-11.01 *et seq.*) and the Federal Fair Debt Collection Practices Act (15 U.S.C. Secs. 1692 *et seq.*). Debt collection laws were written to protect individuals from unethical and unscrupulous collection practices. While the Texas Debt Collection Act and the Federal Fair Debt Collection Practices Act do not apply to government entities, it is recommended that you read and become familiar with these laws to avoid any inappropriate debt collection practices.

ETHICS UPDATE

Recent Ethics Opinions

The Judicial Ethics Committee of the Judicial Section of the State Bar of Texas issues opinions on ethical issues faced by Texas judges. Although these are not binding on the Judicial Conduct Commission, the reasoning of these opinions is insightful.

A municipal judge may request an ethics opinion by writing Judge Stephen B. Ables, 216 District Court, 700 Main Street, Kerrville, TX 78628-5386 (telephone 830/792-2290).

Referral to Private Law Firm for *Pro Bono* Representation

Ethics Opinion Number 289 (2004)

QUESTION: May a judge refer a criminal defendant to a private law firm if the criminal defendant does not qualify as an indigent for purposes of a court appointed attorney, and the law firm would provide legal representation without a fee? The law firm would be part of a short list that includes a law school criminal defense clinic. The lawyers would be qualified and meet the minimum requirements for appointment as required by the Fair Defense Act.

ANSWER: No. Notwithstanding the fact that the representation would be *pro bono*, the Committee is of the opinion that the referral outlined in this question would constitute a recommendation of private counsel, which is prohibited by Canon 2B that states, in part, "a judge shall not lend the prestige of judicial office to advance the private interests of the judge or others, nor shall a judge convey or permit others to convey the impression that they are in a special position to influence the judge." By recommending a specific lawyer or private firm, the judge would be indicating support for the services of a particular lawyer or firm over others. However, the Committee emphasizes that this opinion should not be interpreted to prohibit judges or court personnel from referring persons in need of legal assistance to departments, agencies, organizations, or law school clinics that provide *pro bono* legal services, lawyer referral services or lists of attorneys willing to assist the public in various areas of legal expertise.

For information on the State Commission on Judicial Conduct:

P.O. Box 12265
Austin, Texas 78711
512/463-5533
877/228-5750 (toll-free)
512/463-0511 (fax)

www.scjc.state.tx.us

Appointment of Spouse of Court Personnel

Ethics Opinion Number 290 (2004)

QUESTION: May a county court at law judge, who is assigned all of the probate cases for the county, appoint the spouse of one of the two probate assistants in the judge's office as an *ad litem* in guardianship and heirship cases? The spouse, who is an attorney and meets the requirements established by law to serve as an *ad litem*, would be one of approximately 20 qualified attorneys on the judge's appointment list.

ANSWER: Yes, provided certain procedural safeguards are taken. There is no express prohibition in the Code of Judicial Conduct that prevents the appointment of a qualified spouse of a court employee provided the appointment is made impartially and on the basis of merit. See Canon 3C(4).

However, the Committee expresses its concern that to avoid the appearance of impropriety, the court employee should not be involved in any aspect of the specific case to which his or her spouse is appointed, and the judge should make full disclosure of the nature of the relationship to all parties. Furthermore, all court personnel should be cautioned about the danger of *ex parte* communications regarding those cases. See Canon 3B(8).

COLLECTIONS CORNER

The Collections Process: How to Handle Delinquencies

By Jim Lehman, Collections Specialist, and
Don McKinley and Russ Duncan, Assistant Collections Specialists, Office of Court Administration

A NOTE FROM TMCEC

This article was created to assist court support staff in effective collections. Clearly, not every suggestion is appropriate for municipal judges who, under the Code of Judicial Conduct, have a duty to remain impartial. Court support staff should also recall their duty to reflect the judge's ethical obligation to remain patient and dignified with all court participants, including those who fail to comply with the court's orders.

This month is the conclusion of a two-part series.

How to best handle delinquencies begins with the statement, "No magic is involved in implementing a successful court collections program." There is no fairy dust or magic potions, no special formulas or gimmicks, no state-of-the-art software or breakthrough technology. Success in collecting is the result of hard work.

Collecting is an educational process. In dealing with our personal finances, we all know which creditors can be paid late and which must be paid on time. How we actually pay is not always how we agreed to pay. Each creditor assists us with establishing our payment priorities by how they respond to the way we pay or fail to pay. We learn very quickly what they will or will not tolerate.

In collecting court costs, fees and fines, the educational process begins as soon as a defendant becomes aware that there is an option other than payment in full. As in the private sector, learning does not come from instruction, but from experience. If a defendant is told that the collections coordinator or department is serious and tough, this impression will quickly fade if prompt and swift action is not taken against a delinquent defendant. Told to expect serious consequences upon default, the defendant will learn just how delinquent he or she may actually become before collection action, if any, is taken. The key to successful collecting is timely, consistent follow-up. Nothing that a collections staff says is ever as forceful as what it does. The successful collector and/or collections department must earn and maintain a reputation for saying what it means, and meaning what it says.

Dealing with Delinquent Defendants

When payment has not been made according to the agreed-upon schedule, a variety of follow-up procedures are available to the collections coordinator or compliance officer to encourage the defendant to comply. The collections coordinator or compliance officer should maintain a current record of the defendant's address, telephone number and employment information, as this information can be used to locate a defendant.

Despite the careful evaluation of a defendant's ability and willingness to pay, a certain percentage of installment agreements will become delinquent. An important consideration in dealing with delinquencies is the timeliness in which they are identified and handled. The quicker delinquencies are addressed, the more likely they can be brought current.

Contact should be attempted as soon as possible after a default occurs. It is recommended that contact be attempted no more than two days after a case becomes delinquent. However, before attempting contact, all internal problems (*e.g.*, unposted mail payments, unresolved accounting problems and credits) must be resolved.

When contacting a delinquent defendant, always treat him or her with respect and dignity. Convey to the defendant that you are trying to help him or her solve a problem.

Any contact or attempted contact with the defendant must always be documented.

1. Telephone Contact

Initial contact should be attempted by telephone, as this is the most efficient and effective method available. When dealing with a delinquent defendant, expect some emotion. Remain calm and businesslike even if the defendant becomes agitated or abusive. Let the defendant blow off steam, and then resume the conversation. Unlike the private sector where the incentive to pay may be based on an individual keeping an automobile or some other

property, a defendant's freedom may be at stake in this situation. There is no need to argue. Never threaten to take any action you do not intend to take.

Telephone Calls to Defendant

It is important for cities to establish a policy for contacting defendants by telephone, especially since court collections calls may occur before and/or after normal business hours. This policy should be reviewed and approved by the city attorney.

Telephone Calls to Defendant's Place of Employment

It is permissible to contact the defendant at his or her place of employment. However, in discussing the matter with anyone other than the defendant, the purpose of the call must not be communicated other than to say it is personal business. You should identify yourself by your first and last name and that you are with the City of _____.

Contacting defendants at their place of employment should only be done once a policy has been approved by the court and the city attorney. Contacting the defendant at work when it is known that the employer prohibits such communication may not be in the city's best interest, even if city policy allows it. An unemployed defendant loses the ability to pay.

Telephone Tips when Talking to Defendant

The following are some basic telephone collecting tips when talking to a defendant:

- Be prepared; have all necessary documents within reach.
- Ask for the defendant by first name only. Then identify yourself and your reason for calling.
- Observe good telephone etiquette. Avoid drifting. Stay with your point.
- Ask for the full amount due that day.
- Determine the reason for delinquency and be prepared to respond to some of the more common excuses.
- Maintain a written record of the conversation, including date, name and results.
- Follow up on any promises or deadlines in a timely manner.
- Know what arrangement you will accept and when to accept it.
- Leave the defendant a way out. Deadlines should be accompanied by a rule of exception (*i.e.*, requiring the defendant to come into the office to discuss the problem if payment cannot be made as ordered).

Leaving Telephone Messages

Whenever possible, leave a message for the defendant in his or her absence. Document the attempt to contact, including the date, time and content of the message.

When communicating with a third person about the defendant, do not disclose directly or indirectly that the defendant owes a debt unless such communication is part of the city's approved policy. Even though the defendant's case is public record, maintaining confidentiality is important. Obtain and record the name of anyone with whom you leave a message. Never leave a threatening message. Use good judgment. Be polite and professional when speaking with a defendant's relatives, friends or associates.

When leaving a message with a third person for the defendant to contact you, you should identify yourself by your first and last name and that you are with the City of _____. If the person asks what it is regarding, you should say it is a personal business matter. The following is an example of a message that can be left with a third person:

> *"Hello, this is Jane Doe with the City of ABC Village. May I leave a message for Bill Due? It's urgent that he contact me no later than 3:00 p.m. tomorrow at 555-1212. Please make sure he gets this message—it's very important. Thank you."*

Telephone Calls to Locate Defendant

When trying to locate the defendant or acquire information about the defendant from a third person, you should identify yourself by your first and last name, that you are with the City of _____ and that you are confirming or correcting location information about the defendant.

Once again, when communicating with a third person about the defendant, follow city and court policies.

2. Demand Letters

If the defendant cannot be reached by telephone to discuss a delinquency, or the defendant does not pay as ordered in a previous telephone conversation, the collections coordinator or compliance officer should send a demand letter. Certified mail may be used to verify that the defendant has received the letter; however, some defendants may refuse to accept certified letters.

Some jurisdictions send a third demand letter, if there is no response to the first two letters. The second and third demand letters should be progressively more stringent. Generally, no more than three written contacts with the defendant are recommended. The defendant must be allowed a certain amount of time to respond to each letter (10 days is common) before further enforcement action is taken. If the defendant does not respond to the demand letters, the

collections coordinator or compliance officer should take action using available resources and remedies up to and including requesting the issuance of a warrant.

A demand letter should be sent to the defendant even if a telephone message has been left. A letter that follows up a telephone message reinforces the seriousness of the situation. If the telephone message somehow does not reach the defendant or if it is ignored, the letter acts as a backup and closes an avenue of excuse. Remember, the goal is to make every reasonable effort to advise the defendant of default and any impending action.

If form demand letters are used, they should be reviewed and approved by the city attorney.

The private collections industry has found that demand letters alone are only marginally effective in collecting money. Demand letters used in conjunction with telephone calls and other collection tools provide the best opportunity for success in a collections program.

3. Conversion of Payment Plan to Community Service Plan

A major benefit to both a defendant and the city in establishing short-term payment schedules is the reduced exposure to default or non-compliance due to loss of income. Loss of income is almost always the reason for default. If a defendant becomes unemployed, disabled or in any other way loses his or her source of income, the collections department must re-evaluate the case and take the appropriate action. If the problem is of a very short-term nature, the collections department may elect to temporarily reduce or suspend payments for a short period of time, usually less than 60 days. If the loss of income is temporary, but of indefinite duration, the department may elect to convert the payment plan to community service and allow the defendant to work off the balance owed on the court costs, fees and fines.

The conversion process may also work the other way. If a defendant is removed, for whatever reason, from a community service program before completing the hours needed to eliminate the balance of court costs, fees and fines due, the collections coordinator or department may consider converting the community service to a payment plan. However, firm policies and procedures must be established and enforced to prevent defendants from bouncing back and forth from a payment plan to community service.

4. Failure to Comply

If there are continuing breaches or if the defendant fails to respond to collection efforts, the termination of collection activity may be appropriate. Before this is done, every reasonable effort to assist and/or encourage the defendant to comply must be attempted and documented. A manager, supervisor or lead "experienced" worker should review any file where termination of collection activity is recommended. The defendant must be given every reasonable opportunity to comply. Review may result in one of the following actions:

- the case is referred back to the collections coordinator or compliance officer for a final attempt to resolve the failure to comply;
- the manager, supervisor or lead collector meets with the defendant for a final attempt to resolve the

Collections continued on page 16

SUMMARY

1. The key to successful collecting is timely, consistent follow-up.
2. Contact with the defendant should be attempted as soon as possible after a default occurs.
3. Any contact or attempted contact with the defendant must always be documented.
4. The telephone is the most efficient and effective method of contact available.
5. A collector should never threaten to take any action he/she does not intend to take.
6. If the defendant cannot be reached by telephone, the collector should send a demand letter.
7. When all other collection efforts have failed, the collector should refer a case to the court requesting that an arrest warrant or *capias pro fine* be issued.
8. A collector should never harass or abuse any defendant in connection with the collection of court costs, fees and fines.
9. A collector should never, either in writing or orally, make any statement that can be construed as false, deceptive or misleading in connection with the enforcement of a court order to collect court costs, fees and fines.
10. The Federal Fair Debt Collection Practices Act and the Texas Debt Collections Act were written to protect citizens from unethical and unscrupulous collection practices, and are excellent guidelines for court collections.
11. Please consult your city attorney if any legal questions arise.

TECH CORNER

COURT TECHNOLOGY

Municipal Courts Enhance Their Technological Services

By Jo Dale Bearden, Program Coordinator, TMCEC and Tiffany Dawn Hoffman, Media Specialist, Tele-Works

Texas municipal courts are using technology to enhance and expedite court processes—and I can prove it! Using technology for collections and court access is the new trend. From allowing payments online to recorded jury information that can be accessed 24 hours a day by telephone, municipal courts are embracing technology.

We are an on-demand, right-now society. We can pay electric bills online at 2:00 a.m. and find out who was the actor that played the main character in *Tron* in seconds.[1] This isn't a phenomenon limited to the Generations X and Y—this is a fact for all generations. What does this mean for the court? Simply, if we want to max out our potential for collections and be a source of information versus a source of frustration, it is necessary to begin embracing these new technologies.

24/7 Court Access

What is 24/7 access? It is access 24 hours a day, seven days a week. Through either a telephone or a website, courts are making their information available to their communities. Information such as a court mailing address, jury information or court parking information can be made available on both a website or on a telephony system. Many courts are taking access even further by allowing defendants to make payments over the telephone or through a website. Which courts? Following is a summary of the technology being used in just a few of the courts embracing this type of technology.

Pasadena—Pasadena first implemented their telephony system in 1998 as a question and answer service. Through this system, directions to the courthouse, ticket costs and any other pertinent information is available by entering a ticket number or name and date of birth.

Melissa Hill, Senior Deputy Clerk in Pasadena, said city police officers issue 6,000 tickets each month. "The phone tends to ring all day long," she said. However, with the question and answer system, citizens can access either their personalized information or general information via a voice recording. The court enters the data into their central web-based database, and then it is immediately available for citizens. For the past year, Pasadena has been working to enhance their inquiry system to also be available online. Following that application, they hope to advance technology even further with an ePayment option.

Denton—In 2003, $273,000 was paid either online or by telephone for court fines in Denton. Municipal Court Clerk Tom Josey said the payments have steadily increased each year since the interactive services went online in 2001. "This service gives the public another means of making transactions," Mr. Josey said.

Tickets issued by the police department, fire department, code enforcement, health inspections, parking services, and both local university police departments are recorded in a database. From there, anyone with an infraction may either view or pay fees at any time of day or night. Juveniles and people with certain warrants are required to appear in court. However, general questions about citation inquiries, driving safety class instructions and appearance instructions are available to everyone.

Lewisville—As of April 1, all Lewisville citizens and out-of-towners have online and telephony access to an ePayment module for basic court citations. No juvenile offenses, underage drinking or warrants can be paid remotely. "The city is taking a proactive approach to make city government more accessible to citizens," Presiding Municipal Judge Brian Holman said. "Our intent is to make sure citizens have as much access to courts as possible. It doesn't have to be a Herculean effort to get (tickets) taken care of."

All of Lewisville is working to enhance city-wide payment options, but Lewisville's court department is taking steps even further to improve all areas of service. Already, the courts are utilizing handheld devices that allow police to download citizen information and then make manual changes in reference to their violation. With this device, they can update records without paperflow from the officers through the courts. All tickets will be entered into the database at the time of the infraction.

Additionally, Lewisville is working to make public documents more attainable. Eventually, Holman says, there are plans to implement an imaging system that will make all court documents available online. But, in the even nearer future, the city is preparing

to offer an online and telephony general inquiry service.

Irving—Irving is taking a full-contact approach to technological advancements. "The city council and manager's offices have committed a tremendous amount of money for technological improvements," said Court Coordinator Bill Maitland. In the 2002-2003 fiscal year, Maitland said 1,791 people used the online and telephone applications to pay court fines totaling $330,000. The service has been especially helpful to travelers who are issued tickets while they are in the city. "With technology the way it is, there is an increasing number of people doing business over the telephone and Internet, and people are growing to expect that," Maitland said.

Maitland said many law violators are from out of town and just passing through Irving, which is the eleventh largest city in Texas, located between Dallas and Fort Worth. For these people, remote payments are ideal. "The people that use it love it," he said. Maitland said other nearby cities have been criticized for not having an online court payment service like Irving.

In addition to their online court capabilities, Irving is advancing to a paperless system of court documents with optical imaging. Maitland said the technological headway Irving is making is necessary so access to court documents is more convenient for everyone.

Bryan—In early April, Bryan held a campaign to advertise its new technological service in the court department. But before the newspapers and radios even picked up the story, Bryan's courts reached the $1,500 collection mark. "We didn't think we'd get that much without publicity," said Court Administrator Hilda Phariss, "but it happened within three weeks. People are obviously looking for that without knowing for sure it's out there."

Starting with courts, Bryan is making a significant effort to move toward electronic commerce as an avenue to pay for services. Bryan is the first city in the Brazos Valley to offer both online and telephone payments for most Class C misdemeanor citations. Because of its close proximity to College Station, Ms. Phariss said the city receives a lot of traffic and, therefore, distributes a lot of citations to both community members and out-of-towners. As of now, only new tickets are accepted through the service, but the City may add more as it is used. Currently, people with tickets in warrant status or juvenile offenses cannot pay online and are required to attend court. The payment component is available 24/7 and requires no user fee.

Another advancement that may be offered in another year or two is the addition of a Spanish module for the service. "It's not multilingual at this point, but people can maneuver through the system without speaking English," Ms. Phariss said.

Challenge

These courts are taking that next step, the step that helps to automate the court, expedite processes, inform the public, increase collections, *etc.* Why isn't your court? The initial expense and maintenance can be taken out of the Court Technology Fund, if your city has authorized that collection.[2] Furthermore, the processing fee for credit card payments can be passed on to the defendant.[3] What is the challenge? We are coming upon a new year. Make it your court's goal to implement a new technology in 2005.

Special thanks to Tiffany Dawn Hoffman from Tele-Works (twmain@tele-works.com) who co-authored the article.

[1] It was Bruce Boxleitner who played Alan Brady, a.k.a. Tron, in the 1980s Disney movie.

[2] Article 102.0172, Code of Criminal Procedure. The fee can only be collected if the city has authorized the collection by an ordinance. See "From the General Counsel," *The Recorder*, October 2004 for more information on spending the Court Technology fee.

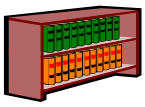
[3] Chapter 132, Local Government Code. *Payment of Fees and Other Costs by Credit Card or Electronic Means in Municipalities and Counties*.

Dallas Community Court: Restoration and Rehabilitation

In October 2004, the City of Dallas opened its Community Court. It will hear Class C misdemeanor crimes committed by non-juvenile offenders in the South Dallas-Fair Park Area. Typical offenses include assaults, prostitution, possession of drug paraphernalia, illegal dumping, and code violations.

The court's mission is to restore the defendant and the community. Defendants will appear before Judge Victor Ortiz within seven days, and defendants who plead guilty or no contest will meet with the community service coordinator. The community service assignment must be completed within the area and may be based on the offenses. For example, an offender who is cited for vandalism by graffiti may be required to complete a community clean up project. The judge may also order a defendant to attend a rehabilitative or educational program. Defendants who plead not guilty will be transferred to municipal court.

The court is located in the Martin Luther King, Jr. Community Center along with 15 other social service agencies. The community service coordinator will work with these agencies to provide assistance to the defendants from GED and workforce training to childcare and health services.



RESOURCES FOR YOUR COURT

Guidelines for Practicing Gender Neutral Courtroom Procedures

A revised version of the *Guidelines for Practicing Gender Neutral Courtroom Procedures* is now available at no charge from the Texas Center for Legal Ethics and Professionalism (512/463-1463 ext. 2161). This 17-page handbook contains practical tips on how to avoid bias in your court. It will be distributed by TMCEC at all 12-hour judges' programs in the next year. Special appreciation is shown to the Texas Bar Foundation for providing a grant to cover publication costs. The publication is a project of the Gender Bias Task Force appointed by the Supreme Court of Texas.

Pro Se Defendants Video/DVD

TMCEC has produced a video on handling *pro se* defendants in municipal courts. This 22-minute video helps judges identify proper procedures for defendants who appear with an attorney in court. One copy is available at no charge to every municipal court in Texas. Additional copies may be purchased for $10. Call TMCEC (800/252-3718) or email (tmcec@tmcec.com) to order your copy, specifying your name, city and whether you would like the VHS video version or the DVD disk version. Copies will be mailed in mid-December.

Comptroller's Survey

The Texas Comptroller has posted a survey on its website (www.window.state.tx.us/survey/lga/lgs/) that asks questions on financial issues for local governments, including courts. There are questions involving courts and an opportunity to comment on reporting requirements, court costs and unfounded state mandated programs. This is an opportunity for cities and courts to express any problems that they are having with court costs, effective dates of legislation, reporting, and so forth. If you have questions about the survey, please contact Local Government Assistance at 512/463-4679 or toll-free at 800/531-5441, ext. 34679. You may also access the survey via the TMCEC website. Click on the link on our homepage (www.tmcec.com) on the upper left column.

Juvenile Law Reference Guides

Texas Juvenile Law (6th Edition), by Robert O. Dawson (University of Texas Law School), is a reference guide recommended to those working with juveniles. It is considered the most comprehensive guide on the topic. Available now. Cost: $50.

New this year is a separate book for municipal judges, justices of the peace and practitioners, entitled *Texas Juvenile Law for Justice and Municipal Court Judges.* This book contains only those chapters of the *Texas Juvenile Law (6th Edition)* that relates to prosecution of juveniles in municipal and justice courts. In addition, all relevant statutes are compiled in this reference book. Available late December. Cost: $20.

Both may be ordered from the Texas Juvenile Probation Commission (TJPC), c/o Diane Laffoon, P.O. Box 13547, Austin, Texas 78711 (512/424-6700). Checks should be made payable to TJPC. Prices include shipping and handling and the cost of the supplement that will be published in December 2005.

18th Annual Juvenile Law Conference

February 1-3, 2005

Renaissance Hotel – Austin

For more information, contact:

Kristy Almager: 512/424-6710

www.juvenilelaw.com

Legislature Online

On Monday, November 8, 2004, pre-filing for the 79th Legislature Regular Session began. As of mid-November, over 200 bills had been filed. The 79th Legislative Session will begin on January 11, 2005. To track legislation or monitor committee action, the Texas Legislature Online website (www.capitol.state.tx.us) is very helpful. Not only is there a database of Texas statutes, but proposed legislation can be reviewed, schedules of when committee hearings are posted and action on bills can be followed.

FROM THE CENTER

Municipal Court Clerk Certification Program Update

2004 Study Guides Available Now – The 2004, 4th Edition of the Level I and Level II Study Guides are available. The new versions can be ordered from TMCEC for $25 (plus shipping), printed from the TMCEC website (www.tmcec.com) or received at a 4-hour Preparation Course. (It costs $15 to attend; registration form with the schedule is on our website: www.tmcec.com.)

The Exams, They Are A-Changing – The exams are being updated as well. Starting January 1, 2005, the Level I and Level II exams will be revised to reflect the changes made to the study guides (see above). Note: If you want to retest before the exams change, please contact Jo Dale Bearden about scheduling a testing date in December (800/252-3718).

Level I Clerks all over Texas, Rejoice – Why? Effective October 1, 2004, clerks who sit for the Level II exam and do not pass a part can now retest just over the part(s) they did not pass. Presently, there are 168 Certified Level II Court Clerks. TMCEC challenges all Level I Certified Clerks to make this the year you become Level II certified.

Contact Jo Dale Bearden at TMCEC for more information (telephone: 800/252-3718 or e-mail: bearden@tmcec.com).

Get CERTIFIED

10 Reasons to Participate in Municipal Court Clerks Certification Program

- Certification improves skills and knowledge.
- Certification reflects achievement.
- Certification builds self-esteem.
- Certification improves the operations of your court.
- Certification establishes professional credentials.
- Certification demonstrates your commitment to the field.
- Certification enhances the image of the professional court clerk.
- Certification prepares you for greater on-the-job responsibilities.
- Certification offers greater professional recognition from peers.
- Certification improves career opportunities and advancement.

For additional information about the Certification Program, contact Jo Dale Bearden at TMCEC, 800/252-3718 or bearden@tmcec.com.

IMPORTANT! A Call for Questions

TMCEC believes that the best education experiences frequently come from group discussions. Throughout the 2004-2005 academic year, participants will have opportunities to engage in such discussions, but your participation is critical in making such sessions a success.

It is for this reason that TMCEC is asking you to submit question(s) and/or discussion topic(s) that you would like to see addressed. Until June 2005, TMCEC will continuously update submissions and use them in facilitating *Asked and Answer: Q and A Session.* This class will be held as a pre-conference at all 12-hour regional judge and clerk conferences, as well as at the Special Topic: Magistrate Duties seminars.

Even if you cannot attend the pre-conference, you are still invited to submit questions. Submissions may be the basis for forthcoming articles in the *Municipal Court Recorder.*

This is your opportunity to directly participate in the dialog of judicial education.

Please submit questions and/or discussion topics:
by fax: 512/435-6118
by email: tmcec@tmcec.com

In the subject line of your message, please state: **A Call for Questions**.

Also, feel free to tell us your name and which, if applicable, pre-conference you will be attending.

1984-2004: 20 Years of Leadership

On September 10, 2004, TMCEC celebrated the 20th Anniversary of the founding of the Texas Municipal Courts Education Center. The celebration was held in conjunction with the Annual Meeting of the Texas Municipal Courts Association. If you are interested in listening to the audiovisual program that outlines the history and organization of TMCEC and TMCA, it can be accessed on the TMCEC website at: www.tmcec.com.

This issue of *The Recorder* is dedicated to volunteers who have served as TMCEC presidents, officers and directors. Their names and cities are shown below. Please contact Hope Lochridge at TMCEC (800/252-3718 or hope@tmcec.com) with any errors or omissions.

TMCA Presidents

83-84 Elinor Walters, Seabrook
84-85 Howbert A. Steele, McAllen
85-86 Spencer W. Kopf, Allen
86-88 Kitty Schild, El Paso
88-89 Robert Kubena, Hallettsville
89-90 Jane Supkis, El Lago
90-91 Sylvia Garcia, Houston
91-92 Robin D. Smith, Midland
92-93 Diane DeVasto, Tyler
93-94 Burt Solomons, Carrollton
94-95 Tommie Mills, Snyder
95-96 Bonnie Sudderth, Fort Worth & Joe M. Pirtle, Seabrook
96-97 Kevin Madison, Cedar Park
97-98 Michael O'Neal, Dallas
98-99 Stella Ortiz Kyle, San Antonio
99-00 Edwin Presley, Benbrook
00-01 Glenn Phillips, Kilgore
01-02 Robert Kubena, Hallettsville
02-03 Joe M. Pirtle, Seabrook
03-04 Sharon Hatten, Midland
04-05 Dan Francis, Robinson

Early Presidents of the Gulf Coast Association of Municipal Judges and Prosecutors and the Texas Municipal Courts Association (1975-1982):

Steve Hebert, Baytown,
Earl B. Webb, League City
Joe L. Draughn, Houston
Robert P. Jungman, Houston
Joe M. Pirtle, Seabrook

Officers and Directors

Randall Ashby, Houston
John Austin, South Padre Island
Toni Baggett, Plano
Phil Banks, Bryan
Robert Barfield, Pasadena
Keith Barry, Dallas
R. James Beylotte, Houston
Richard Browning, Edna
Glenn Chaney, Pearland
Richard J. Cope, Jr., Friendswood/Kemah
Guy Cox, Waco
Marvin Craft, Lumberton
Michael Cummings, Jacksonville
Janet Deen, Merkel
Diane DeVasto, Tyler
Robert Doty, Lubbock
Joe L. Draughn, Houston
Lew Dunn, Longview
James Fitz-Gerald, Midland
Ted Fowler, Houston
Timothy Fox, Brazoria
Dan Francis, Robinson
Gene Frohbieter, Meadows Place
Sylvia Garcia, Houston
Anita Garza
Vicki Gerhardt, New London
Carlton Getty, Santa Fe
Allen Gilbert, San Angelo
Frank A. Gillespie, III, Spring
Susan Louise Godwin, Orange
Carol H. Lane, Houston
Sharon Hatten, Midland
Patsy Hayes, Kilgore
Hector Hernandez, Houston
Kenneth Herron, Ames
Virgil Hill, Sealy
Vonciel Hill, Dallas
Norman Hoppenstein
Clyde Hudson, Amarillo
Jack E. Hunter, Corpus Christi
John Jonietz, Houston
Thomas D. Josey, Denton
Peggy Kenyon, Bridgeport
Dick Kettler, Beverly Hills
Spencer Kopf, Allen
Robert Kubena, Hallettsville
Pamela Lancaster, Austin
John Lemley, West Tawakoni
Erma Louis, Houston
Robert Lozano, San Antonio
Kevin Madison, Cedar Park
Dave A. Mahaffey, Greenville
Ninfa Mares, Fort Worth
Jan Matthews, Lubbock
James McClintic, Groesbeck
Evelyn McKee, Austin
Karl Micklitz, Hempstead
Tommie Mills, Snyder
Otis Moore, Odessa
Amalio Munoz, Donna
Mike O'Neal, Dallas
Pamela Oglesby, San Antonio
Stella Ortiz Kyle, San Antonio
Barbara Osborne, Plainview
Robert P. Junkman, Houston
David Perkins, New Braunfels
Luane Petrash, Webster
Glenn Phillips, Kilgore
Joe M. Pirtle, Seabrook
Quentin Porter, San Antonio
Audrey Poulos, Texarkana
Edwin Presley, Benbrook
Robin Ramsay, Denton
Robert C. Richter, Jr., Missouri City
John Roberts, Waco
George Bill Robinson, Yorktown
Kitty Schild, El Paso
James Sims, Missouri City
Daniel Simms, Houston
Mike Smith, Arlington
Robin Smith, Midland
Steve Smith, College Station
Burt Solomons, Carrollton
Angel Stallings, Port Aransas
Felix M. Stanley, Houston
Howbert A. Steele, McAllen
Bonnie Sudderth, Fort Worth
Barbara Sudhoff, Corpus Christi
Jane Supkis, Seabrook
John T. Lemley, Josephine
Rudy Tamez, Corpus Christi
Moises Vela, Harlingen
Patsy W. Lee, Pampa
Elinor Walters, Seabrook
Dan Weathers, Pasadena
Earl B. Webb, League City
Miles Whittington, Kemah
Steve Williamson, Fort Worth
Fad Wilson, Jr., Houston
Alvin L. Zimmerman, Houston

2004-2005 TMCEC Academic Schedule At-A-Glance

1/12-1/13
Low Volume
Horseshoe Bay Marriott
200 Hi Circle North - Horseshoe Bay, TX 78657
830/598-8600

1/26-1/27
12-Hour Regional Judges/Clerks
Omni San Antonio
9821 Colonnade Blvd. - San Antonio, TX 78230
210/691-8888

2/3-2/4
12-Hour Regional Judges/Clerks
JW Marriott Houston
5150 Westheimer Road - Houston, TX 77056
713/961-1500

2/15-2/16
Low Volume
Tanglewood Resort Pottsboro
290 Tanglewood Circle - Pottsboro, TX 75076
903/786-2968

2/23-2/24
Prosecutors/Court Administrator
Omni Austin Southpark
4140 Governor's Row - Austin, TX 78744
512/448-2222

2/28-3/2
Assessment Clinic
Vintage Villas Austin
4209 Eck Lane - Austin, TX 78734
512/266-9333

3/8-3/9
12-Hour Regional Judges/Clerks
Westin Park Central
12720 Merit Drive - Dallas, TX 75251
972/385-3000

3/22-3/23
Bailiffs/Warrant Officers and Judges
Special Topics: Magistrate Duties
Doral Tesoro
3300 Championship Pkwy - Ft. Worth, TX 76177
817/961-0800

3/30-3/31
Special Topics Judges: Magistrate Duties
Galveston San Luis Resort and Spa
5222 Seawall Blvd. - Galveston, TX 77551
409/744-1500

4/7-4/8
12-Hour Clerks
Radisson Resort South Padre Island
500 Padre Blvd. - South Padre Island, TX 78597
956/761-6511

4/11-4/12
12-Hour Attorney Judges
Radisson Resort South Padre Island
500 Padre Blvd. - South Padre Island, TX 78597
956/761-6511

4/13-4/14
12-Hour Non-Attorney Judges
Radisson Resort South Padre Island
500 Padre Blvd. - South Padre Island, TX 78597
956/761-6511

4/18-4/19
12-Hour Prosecutors
Radisson Resort South Padre Island
500 Padre Blvd. - South Padre Island, TX 78597
956/761-6511

5/5-5/6
12-Hour Regional Judges/Clerks
Ambassador Hotel Amarillo
3100 I-40 West - Amarillo, TX 79102
806/358-6161

5/13-5/15
Assessment Clinic
T Bar M Ranch New Braunfels
2549 Highway 46 West - New Braunfels, TX 78132
830/625-7738

6/8-6/9
12-Hour Regional Judges/Clerks
MCM Elegante Odessa
5200 E. University Blvd. - Odessa, TX 79762
432/368-5885

6/20-6/21
Court Administrators and Bailiffs/ Warrant Officers
Omni San Antonio
9821 Colonnade Blvd. - San Antonio, TX 78230
210/691-8888

7/18-7/22
32-Hour New Judges/Clerks
Omni Austin Southpark
4140 Governor's Row - Austin, TX 78744
512/448-2222

8/8
Legislative Update
Omni Houston Hotel Westside
13210 Katy Freeway - Houston, TX 77079
281/558-8338

8/11
Legislative Update
Holiday Inn Lubbock Hotel & Towers
801 Avenue Q - Lubbock, TX 79401
806/763-1200

8/16
Legislative Update
Hyatt Hotel Austin
208 Barton Springs Road - Austin, TX 78704
512/477-1234

TMCEC Legislative Update

Houston
August 8, 2005
Omni Houston Westside

Lubbock
August 11, 2005
Holiday Inn Towers

Austin
August 16, 2005
Hyatt Regency Austin

Registration Fee: $50

Register to attend using the Legislative Update Registration Form on page 28. If a hotel reservation is required,you must contact the hotel directly. TMCEC will not pay the cost of lodging.

Payment is due with your registration.

TEXAS MUNICIPAL COURTS EDUCATION CENTER
2004-2005 Registration Form

Seminar Date:_____ **Seminar Site:**_____

Type of Program: ❒ Judge ❒ Clerk ❒ Court Administrator ❒ Prosecutor ❒ Bailiff/Warrant Officer*
❒ Legislative Update ($50 program fee) ❒ Assessment Clinic ($100 program fee)

TMCEC computer data is updated from the information you provide. Please print legibly and fill out form completely.

Last Name:_____ First Name:_____ MI:_____

Names also known by:_____ Male/Female:_____

Position Held:_____

Date Appointed/Elected/Hired:_____ Years Experience:_____

Emergency Contact:_____

HOUSING INFORMATION

TMCEC will make all hotel reservations from the information you provide on this form. TMCEC will pay for a single occupancy room at all seminars (**four nights at the 32-hour seminars** and **two nights at the 12-hour seminars)**. To share with another seminar participant, you must indicate that person's name on this form.

❒ I need a private, single-occupancy room.
❒ I need a room shared with a seminar participant. Please indicate roommate by entering seminar participant's name:_____ (Room will have 2 double beds.)
❒ I need a private, double-occupancy room, but I'll be sharing with a guest. (I will pay additional cost, if any, per night.) I will require: ❒ 1 king bed ❒ 2 double beds
❒ I do not need a room at the seminar.

Date arriving: _____ Arriving by: ❒ Car ❒ Airplane ❒ Smoker ❒ Non-Smoker

COURT MAILING ADDRESS

It is TMCEC policy to mail all correspondence directly to the court address.

Municipal Court of:_____ Court Mailing Address: _____ Zip:_____

Office Telephone:_____ Court Telephone:_____ FAX:_____

Primary City Served:_____ Other Cities Served:_____

E-mail:_____

Status: ❒ Attorney ❒ Non-Attorney ❒ Full-Time ❒ Part-Time
❒ Presiding Judge ❒ Associate/Alternate Judge ❒ Justice of the Peace ❒ Mayor
❒ Court Clerk ❒ Deputy Clerk ❒ Court Administrator ❒ Prosecutor
❒ Bailiff/Warrant Officer* ❒ Other: _____

Bailiffs/Warrant Officers: Municipal judge's signature required to attend Bailiffs/Warrant Officers program.

Judge's Signature _____ Date _____

Municipal Court of _____

I certify that I am currently serving as municipal judge, city prosecutor, or court support personnel in the State of Texas. I agree that I will be responsible for any costs incurred if I do not cancel five (5) working days prior to the seminar. I will cancel by calling the Center. If I must cancel the day before the seminar due to an emergency, I will call the TMCEC registration desk at the seminar site. If I am a "no show," TMCEC reserves the right to invoice me or my city for meal expenses, course materials, and possibly housing ($80 plus tax per night). If I have requested a room, I certify that I live at least 30 miles or 30 minutes driving time from the seminar site. Payment is required ONLY for the Assessment Clinics ($100) and the Legislative Updates ($50); payment is due with registration form. Participants in the Assessment Clinics must cancel in writing two weeks prior to seminar to receive refund.

_____

Participant's Signature Date

Return form to:

TMCEC * 1609 Shoal Creek Blvd., Suite 302 * Austin, TX 78701 * or send by FAX 512/435-6118

Texas Municipal Courts Education Center

Legislative Update Registration Form

TMCEC will send you hotel information upon receipt of your registration form and the $50 fee. If you need lodging, you will have to make your own reservation and cover the cost with the hotel.

✓ the program you would like to attend & return completed form with a $50 registration fee to TMCEC.

☐ HOUSTON
August 8, 2005
Omni Houston Westside
Telephone: 281.558.8338

☐ LUBBOCK
August 11, 2005
Holiday Inn Towers
Telephone: 806.763.1200

☐ AUSTIN
August 16, 2005
Hyatt Regency Austin
Telephone: 512.477.1234

Name *(please print legibly)*: _____

Street: _____ City: _____ Zip: _____

Office Telephone #: _____ Court #: _____ FAX: _____

Primary City Served: _____ Other Cities Served: _____

E-mail address: _____

Check all that apply: ❒ Attorney ❒ Non-Attorney ❒ Full Time ❒ Part Time
❒ Presiding Judge ❒ Associate/Alternate Judge ❒ Justice of the Peace ❒ Mayor
❒ Court Clerk ❒ Deputy Clerk ❒ Court Administrator ❒ Bailiff/Warrant Officer
❒ Prosecutor ❒ Other: _____

I certifiy that I am currently serving as a municipal judge, city prosecutor, defense lawyer practicing in municipal court, or court support personnel in the State of Texas. I understand that I will be responsible for making and paying for my own hotel reservation. Payment is required for this program; payment is due with this form. The $50 is refundable if the Center is notified of cancellation in writing three weeks prior to the seminar.

_____

Participant Signature **Date**

TEXAS MUNICIPAL COURTS EDUCATION CENTER
1609 SHOAL CREEK BLVD., SUITE 302
AUSTIN, TX 78701
www.tmcec.com

Presorted Standard
U.S. Postage
PAID
Austin, Texas
Permit No. 114

TMCEC MISSION STATEMENT

To provide high quality judicial education, technical assistance, and the necessary resource material to assist municipal court judges, court support personnel, and prosecutors in obtaining and maintaining professional competence.

Change Service Requested